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In the Supreme Court
OF THE
United States

October Term, 1956

No. 8

Al Richmond and Philip Marshall Connelly,
Petitioners,

vs.

United States of America.

BRIEF FOR PETITIONERS.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 8

AL RICHMOND and PHILIP MARSHALL CONNELLY,
Petitioners,
vs.
UNITED STATES OF AMERICA.

BRIEF FOR PETITIONERS.

OPINIONS BELOW.

The opinion of the Court of Appeals (Clk. R. 105-139) is reported at 235 F.2d 146. The opinions of the District Court are reported at 102 F. Supp. 87; 104 F. Supp. 405; 106 F. Supp. 737; 106 F. Supp. 892; and 106 F. Supp. 906.

JURISDICTION.

The judgment of the Court of Appeals is dated March 17, 1955 and was entered on the same day (Clk.

R. 140). A petition for rehearing was timely filed and was denied on June 15, 1955 (Clk. R. 140). The time for filing petitions for writ of certiorari herein was extended to August 13, 1955 by order of Mr. Justice Frankfurter dated June 27, 1955 (Clk. R. 141). Petition for certiorari was filed on August 10, 1955 and granted on October 17, 1955 (Clk. R. 141). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

1. Whether the evidence was sufficient as to each petitioner to support his conviction for conspiring to violate the Smith Act.

2. Whether the convictions of petitioners on the evidence adduced constitutes a violation of First Amendment guarantees of free speech, press and assembly.

3. In addition petitioners incorporate and rely on the applicable questions presented and arguments thereon in the brief filed in case No. 6.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statutes involved are: 18 U.S.C. 10, 11 (1946 Ed.); 18 U.S.C. 371, 2385 (1948 Ed.). The constitutional provision involved is the First Amendment.

These statutes and the constitutional provision are set out in Appendix A hereto.

STATEMENT OF THE CASE.

I.

PROCEEDINGS BELOW.

On December 21, 1951 petitioners Al Richmond and Philip Marshall Connelly were indicted together with the petitioners in cases Nos. 6 and 7 on a charge of conspiring with each other and with the defendants in the *Dennis* case[1] and with others unknown to the grand jury to (a) wilfully and knowingly advocate the violent overthrow of the Government of the United States, and (b) to organize and help to organize the Communist Party as a group or persons that so advocates, intending, in both instances, to cause said overthrow as speedily as circumstances would permit (Clk. R. 1-2). The indictment charged that, as part of the conspiracy, the alleged conspirators would publish and circulate newspapers teaching and advocating the forcible overthrow of the Government as speedily as circumstances would permit (Clk. R. 3, paragraph 4 of the indictment).

At the close of respondent's case petitioners Richmond and Connelly rested and moved for judgments of acquittal. These motions were denied (Clk. R. 72-74). These motions were renewed when all parties had rested but the Court reserved its ruling. The jury

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[1] *Dennis v. United States*, 341 U.S. 494 (1951).

returned a verdict of guilty. The trial Court thereupon denied the motion for judgment of acquittal notwithstanding the verdict and an alternative motion for new trial (Clk. R. 102-3). Judgments of conviction were entered on August 7, 1952 *(ibid.)*. These judgments were affirmed by the Court of Appeals on March 19, 1955 (Clk. R. 140).

II.

THE EVIDENCE CONCERNING PETITIONERS AL RICHMOND AND PHILIP MARSHALL CONNELLY.

A. Introduction.

For the purposes of this brief it is assumed that somewhere in the lengthy record of this case there is evidence which would suffice to show that two or more of the alleged conspirators did conspire as charged, having the intent charged. In making this assumption we do not mean to imply a belief that such evidence actually exists. We think that quite the contrary is true, that there is no such evidence. However it is our contention that even if the alleged conspiracy was proven as to some persons, the evidence was insufficient to show that petitioners here ever became a part of that conspiracy; and, further, that to permit an inference of petitioners' participation in the alleged conspiracy to be drawn from the evidence adduced as to them constitutes a violation of the First Amendment.

Consequently the recitation of evidence which follows is limited to matters directly involving petitioners Richmond and Connelly, *i.e.* the evidence of what petitioners themselves actually did and said, and, since

their chief activity was the editing of a newspaper, the evidence concerning that publication.[2]

B. Petitioner Al Richmond.

The record contains the following evidence of petitioner Richmond's activities as a journalist on and on behalf of communist newspaper:

1. In the latter part of 1932 petitioner Richmond was on the editorial board of the *Daily Worker* and "was assigned to the waterfront and longshore fraction in New York City" (R. 5354).

2. In 1937 Richmond came to California to work on the *Western Worker* (R. 545-46). The *Western Worker* was a newspaper published by the Communist Party (Ex. 636, p. 4, R. 685; R. 438). During the latter part of 1937 petitioner attended a meeting of the district committee for district 13 of the Communist Party; 12 to 15 other persons were present; the topic under discussion was how to expedite the establishment of a daily newspaper in California, and questions of finance, personnel and subscriptions were considered. (R 440-43).

3. The *Western Worker* ceased publication at the end of 1937 (Ex. 621, R. 689). The *Daily People's World* commenced publication on January 1, 1938 (Ex. 159, R. 687). The December 20, 1937 issue of the *Western Worker* carried a news story which stated that Richmond had been selected by the "Central

[2]It is elementary, of course, that proof of connection with a conspiracy can be proven only through the conduct of the alleged conspirator. *Glasser v. United States*, 315 U.S. 60, 73, 74 (1942).

Committee" to be managing editor of the forthcoming *People's World* (Ex. 636, p. 1, R. 685). A witness testified that after the *People's World* had started, petitioner "became managing editor" (R. 546). He appears as managing editor on the masthead of the August 28, 1939 issue of the *People's World* (Ex. GZ, p. 4, R. 6394).[3] In 1946 Richmond was editor of the *People's World*, a position he continued to hold at the time this case was tried (R. 7795; 3571-72).

4. In 1946 Richmond spoke to a group of Communist Party district managers of the *People's World* at the newspaper's offices in Los Angeles. Respondent's witness, Stephen Wereb, summarizing the content of this talk, said that Richmond discussed "the importance of . . . the *People's World*, in trade union, trade union halls and its Marxist contents. He [Richmond] stressed the Leninist and Marxist approach to every issue of the paper" (R. 3953-54). The witness gave no explanation of what he meant by the "Leninist and Marxist approach."[4]

5. In 1948 Richmond wrote an article entitled "Use the Press as a Key Political Weapon," which was published in the State Convention Report of the California Communist Party (Ex. 186, p. 7, R. 1533). In

[3]That petitioner Richmond's name did not appear as managing editor on the masthead of earlier editions does not necessarily mean that he was not managing editor at an earlier date. Only a few of the issues of the *Daily People's World* actually published in the years prior to his trial were introduced in evidence. One of the earlier issues, that of June 25, 1938, did not list the paper's staff (Ex. D, R. 961).

[4]At another point in his testimony this witness said "I never knew and I still don't know a darn thing about Marxism and Leninism, and I pray God I never do" (R. 4188-89).

this article petitioner bemoans the declining circulation of the *People's World* and then goes on to discuss the relationship of the paper to the Communist Party's political activities. At the end of the article Richmond proposes a series of resolutions designed to remedy the problems he has been discussing.[5]

6. Early in 1949 petitioner addressed a group of 40 to 50 persons at a gathering in the New Palace Hotel in San Diego, urging them to buy and read the *People's World* (R. 1337-38, 1687, 1819-20). The specific purpose of this meeting was to promote the circulation of the *People's World* (R. 1687). As to its sponsorship, respondent's witness said on direct examination that "the party had planned a meeting in the name of the *People's World*" (R. 1337). On cross-examination the witness explained what he meant by "the party planned a meeting": He said, "The meeting itself had been planned in our party clubs, that is, it had been announced and we had been asked for suggestions and so on and so forth. . . ." (R. 1820).

The record contains the following evidence of petitioner Richmond's written and oral statements on subjects other than the *Daily People's World:*

1. Petitioner Richmond wrote a book, *Native Daughter,* which was published in 1942 (Ex. GW, R. 6208). This book is a biography of one Anita Whitney. In it Richmond quotes numerous protests voiced when Miss Whitney, because of her membership in the Communist Party, was convicted of violation of the Cali-

[5]The full text of this article is printed in Appendix B hereto, pp. v-x, *infra.*

fornia criminal syndicalism law. Among those quoted were religious leaders (Ex. GW, p. 132), government officials (*id.* at 125, 132, 139), and newspapers (*id.* at 122, 135).

2. The November 7, 1947 issue of the *People's World* carried an article by Richmond entitled "Save the Peace" (Ex. FM, §2, p. 1, R. 5106). This article says in substance that cooperation between the United States and Russia is essential to world peace, that it is possible to live peacefully with the Russians, and that the policy of the President, Harry S. Truman, was a war policy.[6]

3. During the summer of 1949 a pamphlet on "the struggle against white chauvinism" was distributed and discussed within the California Communist Party (Ex. 330, R. 3555; 3553-56). The pamphlet pointed to recent articles in the *People's World* as examples of chauvinism. Attached to the pamphlet was a copy of an article from the July 15, 1949 issue of the *People's World*. This article, signed by Richmond and others, stated that past issues of the paper had carried stories expressing anti-Negro and anti-Mexican attitudes, and went on to say that this was "especially serious for a paper like the *Daily People's World* which has been . . . in the thick of the battle for the rights of the Negro people and the Mexican-American people. . . .". (R. 3556).[7]

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[6]The full text of this article is printed in Appendix B hereto, pp. x-xiv, *infra*.

[7]The full text of this article is printed in Appendix B hereto, pp. xv-xxi, *infra*.

4. In December of 1950, at the Communist Party West Oakland Section Convention, petitioner Richmond was introduced as "representing the state committee" and spoke briefly "about the necessity of recruiting" (R. 3568-70).

5. In 1950 the California Communist Party published the first issue of a pre-convention discussion bulletin called "The Party Review" (Ex. 181, R. 2832). This bulletin stated that its purpose was to "afford a medium for the exchange of experiences and opinions on a statewide scale in the party's pre-convention discussion. . . . It is designed to . . . provide an instrument through which the major experiences and conclusions of the various party organizations and individual comrades a.e made available to the membership of the entire party in our state. All comrades are invited and urged to write for The Party Review. . . . The state committee has set up a special committee composed of Oleta O'Connor Yates, Hursel Alexander and Al Richmond to help develop the pre-convention discussion. . . ." (Ex. 181, p. 1).

The second issue of "The Party Review" contained an article by Richmond entitled "Strike Struggles—Some Key Conclusions" (Ex. 191, R. 2834; Ex. 655, R. 2851). In this article Richmond stated, "In each strike . . . the enemy of the worker is . . . the capitalist, particularly the big monopoly section of capital that sets the tone and lays down policy of its entire class."[8]

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[8]The full text of this article is printed in Appendix B hereto, pp. xxi-xxiv, *infra*.

The record contains the following evidence of petitioner Richmond's membership in the Young Communist League and the Communist Party, and of his attendance at meetings of those organizations:

1. For three to four months during 1931 petitioner was "organizational secretary" of the Philadelphia Young Communist League (R. 5351-53). In 1938 he attended a state meeting of the California Young Communist League at which some 75 other persons were present (R. 5543). There is no evidence as to what occurred at this meeting.

2. Richmond was present at state conferences of the California Communist Party sometime after 1938 (R. 5543). There is no evidence of what was said at these conferences. Respondent's witness Saunders placed petitioner at district meetings of the California Communist Party between 1938 and sometime in 1939 or 1940 (R. 546). Saunders had previously testified that the *People's World* was discussed at district meetings which occurred during the same time period (R. 445-46).

3. Respondent's witness John Lautner testified that he saw petitioner Richmond at the 1945 convention at which the Communist Political Association was reconstituted as the Communist Party (R. 2038, 2504). That convention took place during July 26 to 28, 1945 (R. 2446; Ex. 42, p. 579, R. 581). A photostatic copy of Richmond's army discharge papers showed that he left the United States on June 22, 1944, en route to the European theater, and did not arrive back in the United States until August 11, 1945, some two weeks

after the conclusion of the 1945 convention (Ex. AY, R. 11,913-14).

4. One of respondent's witnesses testified that about two dozen meetings occurred at her home between December 1947 and about May 1949, and that Richmond, along with some 20 others, attended most of them (R. 5437-47). These meetings, so the witness was told by someone else, were "secret" meetings of the state and county board (R. 5438). There is no evidence concerning the content of these meetings.

5. Another witness for respondent, the superintendent of the building in San Francisco in which the Communist Party had its offices, said that many times petitioner rode the elevator to the floor on which those offices were located (R. 7765; 7796). She testified further that Richmond occasionally "came to the elevator and they [referring to persons in the Communist Party offices] would give me papers, notes to give to Al. . . ." This happened "fully a dozen" times (R. 7796). There was no evidence as to what the notes said.

6. In January 1951, at a regional convention of the Communist Party held in Oakland, petitioner was introduced as the editor of the *People's World*. He gave a talk, the substance of which was not stated (R. 3570-73).

The record contains no other evidence concerning petitioner Al Richmond.

C. Petitioner Philip Marshall Connelly.

The record contains the following evidence of petitioner Connelly's participation in activities not shown to have been Communist Party activities:

1. In June 1938 petitioner Connelly attended a convention of the American Newspaper Guild as a delegate from the Los Angeles local of the Guild (R. 1313-14). This convention, held in Toronto, Canada, was attended by some 200 delegates representing locals from all over the United States (R. 8314; 8319).

2. In 1938, during the Newspaper Guild strike, Connelly was one of a group of strikers who were picketing the *Hollywood Citizen News* (R. 3955). During the same year Connelly was seen at union meetings *(ibid.)*.

3. In 1943 petitioner participated in a "big demonstration . . . . from the City Hall steps to the Olympic Auditorium [in Los Angeles]" (R. 5560).[9]

4. In 1945 Connelly was present at a public choir festival at the Hollywood Bowl, attended also by about 15,000 other persons. At this time and place the witness Rosser asked petitioner why the Communist Party had sent out a letter attacking him (the witness). Connelly replied that Rosser should not talk to him about that matter but should take it up at Communist Party headquarters (R. 6454-55).

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[9]Further testimony showed that this was a demonstration for a second front and that about 9,000 people participated in it (R. 5560, 62); this testimony was struck by the Court (R. 10,058).

5. At an unspecified date Connelly attended a meeting at the CIO hall. This was not a Communist Party meeting (R. 3955).

The record contains the following evidence of petitioner Connelly's participation in newspaper work as a member of the Communist Party:

1. While petitioner was a delegate to the 1938 convention of the American Newspaper Guild, he attended four meetings composed of about 50 delegates who were also members of the Communist Party (R. 7733; 7736; 7738-40). The first of these meetings was opened by one Roy Hudson, who said that its purpose was to coordinate efforts so as to achieve the aims of the Communist Party (R. 7736-37). The witness recalled those "aims" as being "a resolution on the war in Spain" and "the election of a Guild executive board which would be controlled by the Communist Party" (R. 7737). The only other testimony as to the content of these meetings is that one Tim Buck, head of the Canadian Communist Party, was present at the last one.

2. In October 1942 Connelly attended a caucus in his office in the CIO building at which the participants, all members of the Communist Party, discussed ways of setting up union committees to sell the *People's World* among the members of their unions (R. 5557-60). These committees were to be composed both of communists and non-communists (R. 5559). The county committee of the Communist Party had set goals for the sale of *People's World* subscriptions to

union members, and the communists in various unions were trying to meet those goals (R. 5560).

3. Petitioner Connelly appears as Los Angeles editor on the masthead of the September 12, 1949 issue of the *People's World* (Ex. 749, p. 6, R. 11,599). In May or June of 1950 he was introduced to one of respondent's witnesses as "our editor for the *People's World*" (R. 6641). He continued to hold the position of Los Angeles editor at the time this case was tried (R. 11,323).

The record contains the following evidence of petitioner Connelly's association with and participation in the Communist Party other than as a newspaperman:

1. In June 1940 Connelly was present at a meeting of the county committee of the Los Angeles Communist Party (R. 5527-29). As to the content of this meeting, respondent's witness testified, "We discussed the . ... presidential election campaign, and the Communist campaign for Southern California, and discussed the slogans that would be used and how we could push the election campaign. . . . And the slogans that we discussed was [sic]: Don't support the imperialist war; vote Communist; vote for Browder and Ford. . . ." (R. 5528-29). Several months before Pearl Harbor, in March 1941, petitioner attended another county committee meeting (R. 5553). The discussion concerned efforts to organize sentiment against United States participation in the war, and petitioner stated that communists could do this effectively in the trade union movement (R. 5554-55).

2. In June 1941 Connelly spoke at a meeting of about 75 Communist Party members (R. 5555-57; 6162-63). He discussed the "need to mobilize support for the strike that was going on at North American, because the government had threatened to bring in soldiers to settle the strike, and the need for Communists to get together and mobilize the city and protest against the government's interference". (R. 5556-57).

3. In 1945 petitioner was introduced to one of respondent's witnesses as "an old party member" (R. 7827-29). On about six occasions between that time and the early part of 1948 he rode the elevator to the floor on which the offices of the California Communist Party were located (R. 7830).

4. Respondent's witness Litt testified that in March 1948 he attended a "functionaries" meeting (R. 4979). He said, "I believe the defendant Connelly was there, also. No, I would like to retract that. I wouldn't make a positive identification of him at that particular meeting" (R. 4981).

5. Connelly attended two meetings of the Tom Paine club of the Communist Party, one in April 1947 and the other in May 1947 (R. 7635). At the first meeting the members were discussing why they had joined the Communist Party, and, according to respondent's witness, petitioner stated that "the reason he was a member of the Communist Party was that it afforded him an opportunity for organization and direction in the struggle; it additionally afforded

the chance to develop leadership; and thirdly, enabled in this particular club, to organize and direct the policies of the union in which he was active" (R. 7637-38). The subject considered at the second meeting was "whether or not the Party would have to go underground" (R. 7640).[10]

6. In May 1946 petitioner was present at a meeting of about 150 persons in the Mayflower Auditorium in Los Angeles; this was "known as the Elizabeth Gurley Flynn meeting"; the witness did not recall whether petitioner participated in that meeting; what was said there was not stated (R. 3955-56). The same witness thought he had seen Connelly at some large meeting at the Shrine Auditorium (R. 3956).

7. At some unstated date one of respondent's witnesses attempted to collect Communist Party dues from petitioner, but never did, since petitioner was not at home (R. 6644-48).

The record contains no other evidence as to petitioner Philip Marshall Connelly.

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[10]In testifying about this meeting and what occurred there, the witness first said, "I don't believe I could recall exactly what that discussion was about. It was fairly general" (R. 7639). Two questions later, when respondent asked the witness specifically whether "the question of the Communist Party going underground" was discussed, the witness' memory returned (R. 7640).

The witness did not explain what "underground" meant or what its purpose was. Respondent's witness Lautner testified that the purpose of a so-called "underground" structure would be "to have an organization force that can fight its way back into legality . . . get back to a legal status" (R. 2565). Another of respondent's witnesses testified that Communist Party clubs were divided into smaller units because of fear of violence from private groups and harassment by government agencies (R. 4470-71). There is no testimony or other evidence that the purpose of "going underground" was to foment a violent revolution or to advocate such action.

D. The Daily People's World.

During the latter part of 1937 the Communist Party in California decided that the *Western Worker*, an official Party newspaper, should be abandoned, and that a new daily should be established (R. 440-444). This was the beginning of the *Daily People's World*. Its first issue appeared on January 1, 1938, and it has been in publication ever since.

Fifty-seven issues of the *Daily People's World* were introduced into evidence.[11] Their contents may be summarized as follows:

[11]Exhibit No.	Record Reference	Exhibit No.	Record Reference
AK	1883	GZ	6394
AL	1883	HA	6432
AM	1883	JN	10,349
AN	1883	JR	10,423
AO	1883	JS	10,434
AP	1883	KA	10,593
AQ	1883	KD	10,601
D	961	KE	10,601
DM	4095	KF	10,601
DN	4095	KH	10,616
DP	4095	MG	11,076
DS	4182	MH	11,076
DT	4223	MI	11,076
DX	4295	MJ	11,076
DY	4336	MQ	11,839
DZ	4336	MU	11,769
EZ	4893	MV	11,769
FA	4893	MW	11,769
FB	4893	MX	11,769
FC	4893	159	687
FD	4893	159A	5302
FE	4893	375	2873
FL	5106	707	5302
FM	5106	709	5302
GJ	6142-43	710	5304
GK	6142-43	714	5530
GL	6142-43	736A	8060
GM	6142-43	737	8070
GY	6378	749	11,599

In the above list the exhibits designated with letters were introduced by counsel for petitioners; the numbered exhibits were

1. There is no advocacy, express or implied, of violent overthrow of our Government.

2. Regularly included in the *People's World* were articles on sports (*e.g.*, Ex. 709, p. 11, R. 5302; Ex. 714, p. 4, R. 5530; Ex. BT, p. 4, R. 3189; Ex. HA, p. 4, R. 6432), daily radio schedules (*e.g.*, Ex. 736A, p. 10, R. 8060; Ex. 737, p. 10, R. 8070; Ex. BR, p. 10, R. 3168; Ex. BT, p. 5), reports of current music and art events (*e.g.*, Ex. 159A, p. 8, R. 5302; Ex. 709, p. 9; Ex. 710, p. 5, R. 5304; Ex. 749, p. 5, R. 11,599; Ex. AQ, p. 5, R. 1883; Ex. AN, p. 5, R. 1883; Ex. DZ, p. 5, R. 4336; Ex. FB, p. 5, R. 4893), and motion picture and book columns (Ex. 159, p. 5, R. 687; Ex. 710, p. 5; Ex. 714, p. 5; Ex. 737, p. 11; Ex. AP, p. 15, R. 1883; Ex. AQ, p. 5; Ex. DP, p. 5, R. 4095; Ex. FB, p. 5).

3. The paper endorsed and campaigned for such legislation as repeal of the Taft-Hartley Act (Ex. AQ, p. 6), passage of the Wagner-Dingell-Murray Health Bill (Ex. GK, p. 6, R. 6142), defeat of the Mundt-Nixon bill (Ex. AK, p. 1, R. 1883; Ex. AN, p. 6) and enactment of fair-employment-practices legislation (Ex. 159A, p. 1). Shortly before the convening of the California legislature in 1945, a "special legislative supplement" issue was published, in which various state laws were recommended (Ex. DX, R. 4295). The *People's World* also campaigned for changes in the San Francisco city charter (Ex. JN, pp. 3-4, R. 10,349).

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introduced by respondent. Exhibit MH and 710 are the same issue of the paper.

4. In both news stories and editorials the readers of the *People's World* were urged to vote at election time (Ex. DN, p. 1, R. 4095; Ex. AL, p. 1, R. 1883). Candidates were endorsed, including those of major parties (Ex. DM, p. 1, R. 4095).

5. The position of the *People's World* on foreign affairs during the years following World War II included: opposition to support of Francisco Franco, the "Fascist dictator" (Ex. 159A, p. 7); for recognition of Communist China and disavowal of Chiang Kai-shek (Ex. 736A, p. 7); opposition to United States participation in the Korean war (Ex. 375, R. 2873); opposition to the Marshall Plan (Ex. 737, p. 4); support for the administration of foreign aid through the United Nations (Ex. KA, p. 6, R. 10,593).

6. It was a prime policy of the paper to support and campaign for equal rights for minorities, especially the Negro (*e.g.*, Ex. 159A, pp. 3-4; Ex. 736A, § 2, p. 3; Ex. GL, p. 6, R. 6143). An equally strong policy was that of support for organized labor (*e.g.*, Ex. DZ, p. 1, R. 4336; Ex. 710, p. 1; Ex. DZ, p. 1).

The record contains the following evidence of Communist Party supervision over the content of the *Daily People's World:*

1. The *People's World* was discussed at district meetings of the Communist Party from the latter part of 1937 until about August 1945 (R. 441, 446, 457). Either the editor, assistant editor or business manager of the *People's World* was "invariably" present at these district meetings (R. 445).

2. When the district committee arrived at decisions on political matters, the *People's World* would soon carry an editorial or news story concerning that matter (R. 446-47). No specific instances of this were mentioned by the witness.

3. The pages of the *People's World* were open to non-communist writers, and the paper has published articles that did not "reflect the communist views" (R. 11,322). No specific instances of this were mentioned by the witness.

The record contains the following evidence of communist support for the *People's Daily World:*

1. The Communist Party undertook to raise funds for the *People's World* (R. 1565-66; 5461).

2. The paper was sold at "functionaries" meetings (R. 5010).

3. In the spring of 1950 two of the petitioners in case No. 6 were present at a *People's World* meeting; petitioners Richmond and Connelly were not identified as being present at that meeting (R. 2819-2820).

4. In the summer of 1950, at some election rally, petitioner Dobbs[12] spoke on "the circulation of the People's World"; petitioners were not identified as being present at this election rally (R. 2825-27). At another meeting of about 150 persons in March 1948 Dobbs spoke on the importance of supporting the

[12]The petitioners in cases Nos. 6 and 7 will be referred to herein simply as "petitioners" without designation of their case number.

People's World; he further stated that the paper, in addition to disseminating news, could "issue instructions to party workers"; neither Richmond nor Connelly were identified as being present at that meeting (R. 4979-89). At another meeting in March 1948, about 20 persons present, Dobbs said that those communists who were responsible for distribution of the *People's World* in their Party clubs should see to it that they would have means to continue this distribution even if it became illegal to do so; neither Richmond nor Connelly were identified as being present at this meeting (R. 5014-18).

5. During the late '40s the form used to apply for membership in the Communist Party had attached to it a card which could be used to subscribe to the *People's World* (R. 1553-55).

6. The position of "press director" is a "minor" office in Communist Party clubs (R. 6589). One of the duties of the press director was to organize discussions around articles and editorials from the *People's World.* (Ex. MF, p. 15, R. 11,056). The articles in the *People's World* were occasionally used as the basis for discussions of current events at Communist Party club meetings (R. 1299-1300).

The record contains the following evidence concerning use of the *People's Daily World* by the Communist Party in its activities among non-communists:

1. In June 1950 the *People's World* came out with an extra on the Korean War (Ex. 375, R. 2873). The Los Angeles Communist Party placed its own leaflet

inside this issue of the *People's World* and distributed the combination door-to-door (R. 2873).

2. In the spring of 1950 the State Committee of the California Communist Party issued a leaflet entitled "Plan of Action for Peace Month" (Ex. 199, R. 3560). In this leaflet it was urged that the *People's World* be utilized "in all the mass community activities around the peace issue" (Ex. 199, p. 2).

3. Distribution of the *People's World* was considered by the Communist Party to be one way of convincing the general public of the correctness of the communist position on current political issues (Ex. MF, p. 15, R. 11,056; Ex. 199, p. 2, R. 3560). The Communist Party also sought new members from among the non-communist readers of the *People's World* (Ex. MF, p. 15).

A few of the numerous documents which are in evidence contain a passage relating to the importance of *a* newspaper to the Communist Party. Although the substance of what is said in these exhibits is simply that a newspaper can be a powerful propaganda medium, and although there was *no showing that petitioners ever read the pertinent passages or were in any other way connected with them,* respondent has heretofore quoted these materials in arguing the case against petitioners. Consequently, we include them here. We shall not quote them in full, since it will be necessary to do so within the Argument section. The documents are as follows:

1. *The History of the Communist Party of the Soviet Union* contains a section entitled "The Bolshe-

vik Newspaper 'Pravda'—The Bolshevik Group in the Fourth State Duma" (Ex. 28, pp. 149-56, 159, R. 1362). This section was referred to by Dobbs at two meetings at which he spoke on the *People's World*. Dobbs "made an analogy . . . to the importance of the paper by recalling the effect and the value of newspapers during the time of the Russian revolution and the period immediately preceding it" (R. 4986). Also, when Dobbs mentioned the possibility of having to distribute the *People's World* in the face of prohibitory laws, he mentioned that Pravda had been circulated in Russia even when to do so was illegal (R. 5018).

2. A report delivered to a meeting of the Communist Party National Committee in 1946 contains several pages on newspapers (Ex. 2, pp. 810, 817-26, R. 1582). In this article the *Daily Worker* and its Sunday edition, *The Worker*, are referred to some 72 times; the *People's World* is referred to 7 times. The *People's World* is not referred to under the subsections "Steps to be Taken," "Objectives and Tasks," and "Financial Problems." This report states, "The first and main point to be established is that the *Daily Worker* is the official organ and spokesman of the Communist Party" (Ex. 2, p. 819).

3. A report delivered to a meeting of the Communist Party National Committee in December 1946 contains a short section on newspapers (Ex. 637, pp. 75-78, R. 4487). The *People's World* is mentioned once in this report, and that mention is by way of allusion to how the Communist Party in California goes about

seeing to it that its members renew their subscriptions to the *People's World* (Ex. 637, pp. 77-78).

4. Another of respondent's exhibits contains an article entitled "Twenty-five Years of the 'Daily Worker'" (Ex. 265, pp. 72-79, R. 6608). The *People's World* is not mentioned in this article.

5. Another of respondent's exhibits contains an article entitled "Make the Communist Press a Powerful Organ of Struggle" (Ex. 268, pp. 168-75, R. 7524). The *People's World* is not mentioned in this article.

6. From the 1938 resolutions of the Communist Party respondent has quoted a passage which states that the *Daily Worker, The Worker* and the *Daily People's World* are vital to the realization of "the present objectives and historic aims of the working class movement" (Ex. J, pp. 17-18, R. 1248).

7. Finally, two passages from *The Communist International* by Lenin concerning the importance of newspapers as propaganda media are quoted by respondent (Ex. 514, pp. 174, 202, R. 3815).

E. Matters as to Which There Was No Evidence.

There is no evidence in the record of this case that either petitioner Richmond or petitioner Connelly ever expressly advocated violent overthrow of our Government. There is no evidence that either of them ever said anything construable as advocacy of violent overthrow. Putting aside the question whether the doctrines of Marxism-Leninism are in any sense equatable with advocacy of force and violence, there is no evidence connecting either petitioner with the study,

teaching or advocacy of Marxism-Leninism. There is no evidence in this case that either petitioner was present at any meeting where anyone else expressly advocated forceful overthrow of the Government, or said anything interpretable as so advocating, or taught, studied or advocated the doctrines of Marxism-Leninism.

There is no evidence that the *Daily People's World*, the newspaper with which petitioners were connected, ever contained one word, either express or implied, advocating violent revolution.

SUMMARY OF ARGUMENT.

I. The evidence is insufficient to show (a) that petitioners participated in the alleged conspiratorial agreement, or (b) that petitioners intended to cause the voilent overthrow of the Government as speedily as circumstances would permit. The testimony presented by respondent showed that petitioners were members of the Communist Party, attended various of its meetings, participated in some of its activities, made miscellaneous written and oral statements, and edited the *Daily People's World*. There is no testimony that petitioners ever expressly or impliedly advocated violent revolution. There is no such advocacy in the newspaper they edited. Only by engaging in a series of tenuous and wholly speculative inferences could a jury ever conclude from such testimony that petitioners were guilty as charged. For each inference essential to a conclusion of guilt there is an equally

probable, often more probable, inference which conflicts with guilt and is consistent with innocence. Testimony of such an ambiguous nature does not constitute "substantial" evidence of "guilt beyond a reasonable doubt." Moreover, the reasoning necessary to a conclusion of guilt involves a series of inferences, each based upon a prior inference rather than upon a fact established by direct testimony. Convictions based on such highly speculative reasoning are not supported by sufficient evidence.

Participation In The Conspiratorial Agreement. The evidence concerning meetings at which petitioners and alleged co-conspirators were jointly present is of two types. First there is testimony that petitioners attended a meeting but nothing as to what was said or done there. Since the very witnesses who testified concerning these meetings had attended them, and thus knew fully what happened there, the most reasonable inference is that nothing occurred which would prove the charge against petitioners. Certainly the opposite inference is completely untenable. Second, there is testimony of meetings attended by petitioners and of what was said or done there. Nothing even remotely connected with the supposed conspiracy occurred.

The verbal and written statements of petitioners are in no way related to advocacy of violent revolution. For the most part these statements are no more nor less than the expression of views on the political issues of the day. In addition there is testimony that petitioner Richmond spoke of a "Marxist and Leninist

approach" to the *Daily People's World*. The only evidence as to what petitioner meant by those words is to be found in the newspaper itself. The content of that newspaper proves quite the opposite of participation in the alleged conspiracy. As to petitioner Connelly, there is evidence that he was present at a Communist Party club meeting at which the question "whether the Communist Party would have to go underground" was discussed. There is no evidence of petitioner's views on the subject. There is no evidence that the so-called "underground" indicates the existence of the alleged conspiracy, or that agreement with the idea of an "underground" shows participation in the alleged conspiracy.

Petitioners' editorship of the *Daily People's World* —a newspaper supported, used and substantially controlled by the Communist Party—shows that petitioners supported the Communist Party. The question in this case, however, is whether petitioners supported the Communist Party *as an instrument for the advocacy of violent revolution.* The fact of editorship does not in itself show such a purpose. None of the facts concerning the way in which the Communist Party supported, used or controlled the newspaper show such a purpose. Nor are any of these facts such as would indicate the existence of the alleged conspiracy.

The fact that petitioners acted, spoke and wrote *as members of the Communist Party* fails to prove participation in the supposed conspiracy. Respondent's theory is that there was a conspiratorial group

within the Communist Party, which group, as a part of its conspiracy, had agreed to teach "Marxism-Leninism"; that such teaching is *per se* the advocacy of forcible overthrow; and that persons such as petitioners must have known that "Marxism-Leninism" constituted such advocacy. This theory is contrary to law. *Schneiderman v. United States*, 320 U.S. 118 (1943). This theory is contrary to plain common sense and conflicts with all we know about the problems of semantics. The doctrines called "Marxism-Leninism," after all, constitute an entire philosophy, covering various aspects of human knowledge and activity. No philosophy in history has ever been uniformly interpreted, even by its adherents. Respondent's theory is contradicted by the testimony of respondent's own witnesses, testimony which shows that members of the Communist Party disagreed and had conflicting ideas on the correct interpretation of "Marxism-Leninism." There is no testimony concerning the way in which petitioners interpreted "Marxism-Leninism," and certainly it can not be *assumed* that their interpretation involved violent overthrow of the Government.

Intent. The evidence is insufficient to prove intent for the same reasons as it is insufficient to show participation in the alleged conspiracy. But even assuming that participation were proven, to deduce from this inferred participation that petitioners possessed the proscribed intent would stretch the testimony beyond the breaking point of "substantiality." Many men might agree to advocate violent revolution, but

wish no part of the violence themselves. Assuming that it is possible to infer from the testimony that petitioners agreed to the proscribed *advocacy,* there is no testimony from which it could be inferred that petitioners personally intended to cause a violent overthrow of the Government.

Most important, in respect to the issue of intent, there is no evidence to indicate that petitioners intended to cause violent revolution *as speedily as circumstances would permit.* In *Dennis v. United States,* 341 U.S. 494, this Court held that the Smith Act, *as interpreted,* did not violate the clear-and-present-danger test. Under that interpretation, possession of an intent to overthrow the Government "as speedily as circumstances would permit" was an essential part of the "clear and present danger." An intent to cause forcible overthrow at some indefinite time in the remote future can not satisfy the test of the *Dennis* case. If such an intent were sufficient, then the phrase "as speedily as circumstances would permit" would be meaningless surplusage: It would have been sufficient for this Court to have said simply that a defendant must have intended to overthrow the Government. If, contrary to reason and law, it be assumed that all other aspects of the charge against petitioners were proven, there still would be no evidence to show that they intended to cause violent overthrow other than at some indefinite, distant, remote future time. Petitioners spoke and acted to achieve social reforms through the democratic process. These efforts to achieve social reform are inconsistent with the notion

that petitioners sought to create conditions for a violent revolution. If they intended such a revolution, the intent had no orientation in time and certainly was not directed toward accomplishment as quickly as possible.

2. Conviction of petitioners on the evidence adduced violates the First Amendment guarantees of free press, speech and assembly. The practical effect of a ruling that the evidence against petitioners is sufficient is to prohibit others from engaging in the activities which the testimony shows petitioners to have engaged in. Under such a ruling these activities are enough for a jury to infer guilt. Thus one who would escape petitioners' fate must refrain from acting as they did. Whether such a ruling is consistent with the First Amendment depends upon a balancing of interests.

On the one hand there is society's interest in preserving the freedom to speak, write and publish as petitioners did. The value of this interest cannot be over stated. This is because petitioners were challenging some of the basic hypotheses upon which our actions as a nation, nationally and internationally, were based. Freedom to discuss this type of issue is of the utmost importance to a free society. Only if such essential problems can be openly debated can there be any assurance that the assumptions upon which we act are true.

On the other hand, society has a vital interest in preventing conspiracies to advocate violent revolution. The weight of this interest, however, is a variable. Ob-

viously, if the evidence showed only that a man advocated trade unionism, society would have no interest in the promulgation of a rule of law under which he could be convicted of conspiracy to violate the Smith Act. There simply would be no significant likehood that this man was such a conspirator. In the case before us the evidence shows that petitioners engaged in lawful writing, speech and assembly; that is all. The inferences by which such testimony is converted into proof of the offense charged are dubious at best. Thus it is unlikely that society's interest in preventing conspiracies to violate the Smith Act would be served by a prohibition of such activities. Considering this, and considering the importance of preserving freedom to discuss fundamental beliefs and ideas, conviction of petitioners—prohibition of their activities—violates the First Amendment.

ARGUMENT.

I.

THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE VERDICTS AGAINST PETITIONERS.

Like most crimes, the offense with which these petitioners were charged involves both an objective and a subjective element. It was incumbent upon respondent to prove first that petitioners agreed with the alleged co-conspirators to advocate the forcible overthrow of our Government and to organize the Communist Party as a medium for that advocacy. Second, it was necessary to show that petitioners, in

so agreeing, specifically intended to bring about violent overthrow as speedily as circumstances would permit. The question, then is whether, under the criteria of sufficiency generally applicable in criminal cases, the evidence adduced at this trial suffices as proof of both the act and intent which together constitute the crime with which petitioners were charged.

A. The Criteria of Sufficiency.

Whether the evidence was sufficient to support the verdicts against petitioners depends upon whether the record contained any substantial evidence of guilt beyond a reasonable doubt. The evidence was wholly circumstantial. No witness testified that he observed the formation of a conspiracy, and of course there was no direct evidence of state of mind. The jury was asked to infer that petitioners had agreed as charged and that they had the requisite specific intent. This is quite unobjectionable. Circumstantial evidence, if sufficient, is as satisfactory as direct evidence. However, the evaluation of the sufficiency of circumstantial evidence involves problems not present when the evidence is direct. These problems and the approach to their solution will be briefly considered before passing to an analysis of the evidence concerning petitioners.

The sufficiency of a proof, direct or circumstantial, depends in the first instance upon the force of the *testimony* upon which the proof is based. Suppose, for example, that *X* is being prosecuted for murder. Testimony that *X* was seen stabbing the victim would

constitute direct evidence. Testimony that the victim was killed at a certain time and place and that *X* was seen leaving that place at about the time of the murder would be circumstantial evidence. The first step in evaluating the sufficiency of either piece of evidence is to determine whether it is probable that what the witness reported corresponds to what actually occurred. If the direct evidence is found to be probable, the inquiry into its sufficiency is completed. However, in respect to the circumstantial evidence, the conclusion that the testimony probably is true does not end the inquiry. The *validity of the inference* to be drawn from that testimony must be considered. The fact that *X* was seen leaving the scene of the crime provides a basis for inferring that he committed the murder. But other inferences also are possible. Consequently, in assessing the sufficiency of circumstantial evidence, a reviewing court must consider not only whether the actual testimony possesses a sufficient probability of truth but also whether the inferences to be drawn from that testimony are sufficiently probable.

That circumstantial evidence presented such a problem was recognized at an early date.[12a] This recogni-

[12a] The early writers stated that in a criminal case circumstantial evidence would suffice only if it excluded all reasonable hypotheses but that of guilt. See, *e.g.*, 1 STARKIE, EVIDENCE *506 (1826); 3 GREENLEAF, EVIDENCE, 32-33 (2d ed. 1853), WILLS, CIRCUMSTANTIAL EVIDENCE *149 (Amer. ed. 1857); BURILL, CIRCUMSTANTIAL EVIDENCE 737-38 (1868). The same rule was stated by those who wrote at the end of the nineteenth and the beginning of the twentieth century. See GILLETT, INDIRECT AND COLLATERAL EVIDENCE 68 (1897); 3 ENCYCLOPEDIA OF EVIDENCE 92. (1904); HAMMON, EVIDENCE 23 (1907); 1 MOORE, TREATISE ON FACTS 600 (1908).

tion was first manifested in the formulation of a jury instruction.[13] Then came tests to be applied by an appellate court. Today most of the Federal Courts of Appeal apply this test: The circumstances must be consistent with guilt and inconsistent with any reasonable hypothesis of innocence; if the circumstances are consistent with a reasonable hypothesis of innocence, then the trial court should have directed a verdict of acquittal.[14] The formulation followed in

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[13]The earliest decision appears to have an English one. *Hodge's Case*, 168 Eng. Rep. 1136 (1838). In that case the Court charged the jury that the circumstances must be inconsistent with any rational conclusion but guilt in order to justify a verdict of guilty. The same charge appears in early cases in this country. *E.g.*, United States v. Babcock, 24 Fed. Cas. 913, No. 14,487 (E.D.Mo. 1876). Substantially the same charge is generally given to modern day juries. It was given in the instant case (Instruction No. 4, R. 13,730-31). Whether such an instruction clarifies or confuses the issues for a jury is questionable. It was for that reason that this Court recently held that it was not error to refuse such an instruction. *Holland v. United States*, 348 U.S. 121 (1954). Indeed, it seems apparent that the jury in the instant case paid no attention to the instruction or else failed to understand the import of it. Of course, it is precisely because juries may make such errors that appellate courts will carefully scrutinize the evidence, especially circumstantial evidence, to determine its sufficiency.

[14]Third Circuit: *United States v. Laffman*, 152 F.2d 393 (1945); *United States v. Tatcher*, 131 F.2d 1002 (1942); *United States v. Russo*, 123 F.2d 420 (1941); *Wiener v. United States*, 282 Fed. 799 (1922). Other decisions in the Third Circuit have held that there must be "substantial" evidence excluding all reasonable conclusions but that of guilt. Two of these involved a charge of conspiracy. *McLaughlin v. United States*, 26 F.2d 1 (1928); *Ridenour v. United States*, 14 F.2d 888 (1926).

Fifth Circuit: *Vick v. United States*, 216 F.2d 228 (1954); *McTyre v. United States*, 213 F.2d 65 (1954); *Rent v. United States*, 209 F.2d 893 (1954); *Bryan v. United States*, 175 F.2d 223 (1949); *Garrison v. United States*, 163 F.2d 874 (1947); *Strickland v. United States*, 155 F.2d 167 (1946); *Hubby v. United States*, 150 F.2d 165 (1945); *Kassin v. United States*, 87 F.2d 183 (1937); *Tomplain v. United States*, 42 F.2d 205 (1930);

the Ninth Circuit, nowhere mentioned in the opinion in this case, is this: If reasonable minds must agree that the circumstances permit a reasonable inference of innocence, it is error to submit the case to the jury.[15] The First Circuit and the English and Ca-

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De Luca v. United States, 298 Fed. 412 (1924); *Sherman v. United States*, 268 Fed. 516 (1920).

Sixth Circuit: *Dawes v. United States*, 177 F.2d 255 (1949); *Epstein v. United States*, 174 F.2d 754, 769 (1949); *Tucker v. United States*, 224 Fed. 833 (1919) (dictum).

Seventh Circuit: *United States v. Fenwick*, 177 F.2d 488 (1949).

Eighth Circuit: *Wesson v. United States*, 172 F.2d 931 (1949); *Langer v. United States*, 76 F.2d 817 (1935); *Philyaw v. United States*, 29 F.2d 225 (1928); *Vernon v. United States*, 146 Fed. 121 (1906). In several other cases the Court has held that there must be "substantial" evidence precluding a reasonable hypothesis of innocence. *E.g., Salinger v. United States*, 23 F.2d 48 (1927).

Tenth Circuit: *Sapir v. United States*, 216 F.2d 722 (1954); *Morgan v. United States*, 159 F.2d 85 (1947).

District of Columbia Circuit: Until 1947 the "reasonable hypothesis" rule was consistently followed. *E.g., Hammond v. United States*, 127 F.2d 752 (1942). In that year it was expressly repudiated in a decision which did not refer expressly to situations in which *all* the evidence is circumstantial. *Curley v. United States*, 160 F.2d 229 (1947). The *Curley* case was followed in *McGuire v. United States*, 171 F.2d 136 (1948). However, in the latest decision the Court has held that if the evidence is wholly circumstantial, then it is insufficient unless it excludes every reasonable hypothesis of innocence. *Maryland & Virginia Milk Producers Ass'n v. United States*, 193 F.2d 907 (1951). The *Maryland & Virginia* case was cited and followed in *United States v. Kelly*, 119 F. Supp. 217, 221 (D.C. 1954).

The "reasonable hypothesis" rule has been followed in cases decided under Federal Rule of Criminal Procedure 29(b). *Vick v. United States, supra; United States v. Maghinang*, 111 F. Supp. 760 (D. Del. 1953); *United States v. Gasomiser Corp.*, 7 F.R.D. 712 (D. Del. 1947).

Apparently the rule is not followed in the Second Circuit. It was followed in two early cases. *Romano v. United States*, 9 F.2d 522 (1925); *Nosowitz v. United States*, 282 Fed. 575 (1922). But it has not appeared since.

[15] *Schino v. United States*, 209 F.2d 67 (1953) (decided under Rule 29(b)); *Remmer v. United States*, 205 F.2d 277 (1953), *rev'd on other grounds*, 347 U.S. 227 (1954).

nadian courts state that a conviction must be reversed if the circumstances are equally consistent with both innocence and guilt.[16]

Each of these formulae, despite their apparent differences, have two important points in common. First, they are not something separate and apart from the "substantial evidence" rule. They are simply the expression of that rule in its specific application to verdicts based on circumstantial evidence. Thus, if reasonable minds must agree that the circumstances are subject to a reasonable explanation consistent with the defendant's innocence, the jury hardly could have found guilt beyond a reasonable doubt. And certainly no verdict of guilt could be sustained if the circumstances proven were equally consistent with innocence.

Second, these so-called "rules" are important not as mechanical tests but as a method for approaching

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[16]First Circuit: *Roukous v. United States*, 195 Fed. 353 (1912); *Yoffe v. United States*, 153 F.2d 571 (1946) (dictum).

England: *Rex v. Carter*, 23 Cr. App. Rep. 101 (1931); *Rex v. Bookbinder*, 23 Cr. App. Rep. 59 (1931); *Harries v. Thomas*, 86 L.J.K.B. 812 (1917).

Canada: *Regina v. McKay*, 107 Can. Crim. Cas. 304 (Sup. Ct. 1953); *Rex v. McEwan*, [1932] 3 W.W.R. 564, 570 (Alb. Sup. Ct.) (dictum); *Rex v. Tymko*, 42 Can. Crim. Cas. 147 (Alb. Sup. Ct. 1924); *Rex v. Carey*, [1945] 3 W.W.R. 508 (B.C. Ct. App.); *Rex v. Dawley*, [1943] D.L.R. 401 (B.C. Ct. App.); *Rex. v. Vinegratsky*, 60 Can. Crim. Cas. 258 (Manitoba Ct. App. 1933); *Rex v. Yok Yuen*, [1930] 1 D.L.R. 716 (Ont. Sup. Ct. 1929); *Rex v. Demetrio*, 59 Ont. L.R. 249 (Sup. Ct. 1926); *Rex v. McGrath*, [1946] 1 W.W.R. 59 (Sask. Ct. App. 1945). See also, *The King v. Horry*, [1952] N.Z.L.R. 111, 122 (Ct. App. 1951) (dictum).

For recent discussion of the problem of appellate review of criminal convictions based on circumstanial evidence see, 55 COL. L. REV. 549 (1955); 38 GEO. L.J. 285 (1950); [1948] WIS. L. REV. 93.

the problem. They focus attention on and sharply define the critical issue: Do the circumstances established by the evidence make it sufficiently probable that the inferences necessary to the verdict are true. Whether the criterion of sufficient probability be "inconsistent with innocence" or "more consistent with guilt than innocence" is of little consequence. The rules must be applied, and in the application the variations of wording are unlikely to make much difference.

Consequently we do not urge this Court to expressly adopt any particular form of the rule. We do urge the Court to adopt the methodology implicit in all the formulations: evaluate the probability of the inferences which the jury must have made in finding that petitioners were guilty as charged. This is an approach with deep historical roots, an approach which for decades has been a safeguard against convictions based on *possible* inferences from *equivocal* circumstances. We are not concerned with what criterion the Court may employ in determining whether an inference is sufficiently probable. We think that the circumstances proven in this case, if not inconsistent with guilt, at least are equally consistent with innocence. If so, under no test yet enunciated would the evidence be considered "substantial."

A second principle which the Court may wish to consider is the rule that an inference can be predicated only upon a fact which was established by direct evidence. *E.g., Pennsylvania R.R. v. Chamberlain,* 288 U.S. 333 (1933); *Sapir v. United States,* 216

F.2d 722 (10th Cir. 1954); *Wesson v. United States*, 172 F.2d 931 (8th Cir. 1949); *United States v. Russo*, 123 F.2d 420 (3rd Cir. 1941); *Simon v. United States*, 78 F.2d 454 (6th Cir. 1935).[17] How rigidly this principle should be applied may be open to question. But once again the underlying rationale is more important than the black-letter rule. That rationale is closely related to the basic approach discussed above. Different and often conflicting inferences can be based on the same proven fact. Because of this there is a certain possibility that any particular inference is erroneous. If an ultimate conclusion is predicated upon a string of inferences, the possibilities of error are multiplied.[18] Since the sufficiency of circumstantial evidence depends on the probability of the inferences necessary to the verdict, it is important to determine whether the necessary inferences are based on direct evidence or on other inferences.

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[17]One of the earliest statements of this principle appears in a work by Jeremy Bentham:

> "As every part of circumstantial evidence is a fact intended to be the groundwork of an induction, this fact ought to be proved as completely and regularly as if it were itself the subject of the investigation." BENTHAM, JUDICIAL EVIDENCE 186 note (1825).
>
> "Since circumstantial evidence consists in reasoning from facts which are known or proved, to establish such as are conjectured to exist, the process is fatally vicious and defective if the circumstances from which it is sought to deduce the conclusion depend also upon conjecture and speculation." MOORE, *op. cit. supra* note 12, at 600.

[18]Thus, if the directly proven fact is *a*, and *b* is one of two possible inferences from *a*, the conclusion that *b* is true is subject to one possibility of error. If *b* is now used as the basis for a further inference, *c*, and *c* is one of two possible inferences from *b*, the possibility of error is doubled: the conclusion that *a* proves *b* may be wrong, and the conclusion that *b* proves *c* may be wrong.

In examining the evidentiary theory of respondent's case, the Court will find various instances in which inferences, indeed a string of inferences, constitute the basis for conclusions necessary to the jury's verdict. This in itself, we think, establishes that the evidence was unsubstantial and insufficient.

We turn now to an analysis of the evidence, first the evidence relating to the issue of participation in the alleged conspiracy, and second the evidence pertinent to the issue of intent.

B. The Evidence Concerning Participation in the Alleged Conspiratorial Agreement.

1. *The Issue.*

The indictment in this case charges that the defendants, including petitioners, conspired to advocate violent overthrow of our Government and to organize the Communist Party as a society which would so advocate. However, it is not the Communist Party itself which is supposed to constitute the conspiracy, but rather an elite group within the Communist Party, which group allegedly conspired to use the Communist Party as a means for advocating force and violence.

Petitioners have never denied that they were members of the Communist Party and participated in some of its activities. Petitioners have continuously and clearly denied that they ever were a part of the supposed conspiratorial group. The issue, then, is whether it can be inferred from proof of petitioners' membership and activity in the Communist Party

that they were members of the charged conspiracy, the alleged elite group *within* the Communist Party.

There is no substantial evidence from which it could be directly inferred that any of the alleged conspirators agreed to advocate forcible overthrow of the Government. There is evidence which would permit an inference that some of the defendants agreed to teach "Marxism-Leninism." It is this inferred agreement to teach "Marxism-Leninism" upon which respondent has consistently relied as proof of the alleged conspiracy to advocate violent revolution. However, proof of an agreement to advocate "Marxism-Leninism" would not suffice as evidence of the alleged conspiracy. It would be necessary to show that the agreement to teach "Marxism-Leninism" involved a further understanding, namely an agreement that the doctrines denominated "Marxism-Leninism" be interpreted as calling for the violent overthrow of the Government of the United States.[19]

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[19] In *Schneiderman v. United States*, 320 U.S. 118, 155-57 (1943), this Court reviewed various of the books included within "Marxism-Leninism," the same books relied on by respondent here, and then stated, at page 157:

> "A tenable conclusion from the foregoing is that the Party . . . desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained power in a peaceful manner. . . ."

The Court carefully pointed out that it was not deciding what the program of the Communist Party was. All that was decided was that if the program was to be gleaned from the books introduced by respondent, there and here, then the program was ambiguous because those books were ambiguous. This problem is discussed at greater length herein at pages 82-91, *infra*.

Consequently in examining the evidence concerning petitioners to see whether it constitutes substantial proof of participation in the alleged conspiracy, two questions must be asked: Do the facts concerning Richmond and Connelly constitute sufficient evidence that they agreed to advocate "Marxism-Leninism"? Are those facts sufficient to prove that petitioners agreed that "Marxism-Leninism" be interpreted as requiring the use of force in the acquisition of governmental power in the United States?

For purposes of analysis the evidence has been divided into four parts: contacts between petitioners and alleged co-conspirators; written or oral statements attributable to petitioners; petitioners' activities on the *Daily People's World;* the fact that petitioners acted as members of the Communist Party.

2. *Contacts Between Petitioners and Alleged Co-Conspirators.*

It is common in conspiracy cases to introduce evidence of meetings and other contacts between the alleged conspirators. The theory upon which such evidence is posited as proof of the conspiracy and whether that theory is applicable here will be considered later. First the evidence of relations between petitioners and the alleged co-conspirators will be examined.

Contacts Between Petitioner Richmond and Alleged Co-conspirators.[20] Petitioner Richmond attended three

[20]The evidence considered in this subsection does not include evidence of meetings attended by petitioner at which no alleged

conventions at which alleged co-conspirators were present. The first, held in 1938, was a state meeting of the Young Communist League; some 75 persons were there, including petitioners Dobbs and Carlson (R. 5543). The second, held in 1950, was a local Communist Party convention; petitioner Lima was among the 20 persons present; Richmond spoke briefly on recruiting (R. 3562, 3568-70). At the third, another local convention, petitioners Lima and Schneiderman were among the 40 to 50 people in attendance (R. 3570-72).

Between late 1937 and sometime in 1939 or 1940 petitioner attended some district meetings (R. 546). We know the details of one such meeting: petitioners Yates and Schneiderman were present and the subject under consideration was the establishment of the *Daily People's World* (R. 440-42). As to the other district meetings held during this period, we know neither the persons present at those attended by Richmond nor the matters discussed nor the specific ones he actually went to. We do know that the *Daily People's World* was considered at many of these gatherings and that petitioner Richmond was managing editor of that newspaper during those particular years (R. 445-46, 546).

Petitioner also attended most of a series of so-called "secret" meetings of the state and county board. These occurred between December 1947 and May 1949 and were attended by about 20 people, including 5 to 7

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co-conspirators were present. Such meetings are considered in sections which follow.

alleged co-conspirators. They were held at the home of the witness who testified concerning them, and she was present in her home while they were taking place (R. 5437-49). Her testimony, however, leaves us ignorant of what was discussed.

Finally there is evidence of *possible* contacts between petitioner Richmond and alleged co-conspirators. Thus on various unspecified dates he entered a building in San Francisco and rode the elevator to the floor on which Communist Party headquarters were located (R. 7796). The elevator operator, who had joined the Communist Party at the request of the FBI, so testified. She also testified that on about a dozen occasions unspecified persons in those offices gave her notes which she delivered to Richmond (R. 7796). Petitioner also attended state conferences sometime after 1938 (R. 5543).[21]

Contacts Between Petitioner Connelly and Alleged Co-conspirators.[22] In June 1940 petitioner Connelly attended a meeting of the county committee of the Los Angeles Communist Party; 15 persons were present, including petitioner Steinberg and alleged co-conspirator Pettis Perry (R. 5527-29). At another county committee meeting, this one in March 1941, petitioner Connelly and alleged conspirator Perry were among

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[21]There was no testimony specifically stating that petitioner and some alleged co-conspirator were jointly present at these conferences. However it is likely that such joint presence occurred. This assumption, absent other evidence, would seem to prove nothing.

[22]The evidence considered in this subsection does not include meetings attended by petitioner at which no alleged co-conspirators were present. Such meetings are considered in sections which follow.

the 14 people in attendance (R. 5553). Connelly and Perry were both present at another meeting in 1941; total attendance at this one was about 75 (R. 5555-56). In 1947 petitioner went to two Communist Party club meetings; petitioner Healy was one of the other 8 to 10 persons present (R. 7635-40).

In addition to the above, petitioner Connelly, like petitioner Richmond, entered a building and took the elevator to the floor on which Communist Party headquarters were situated (R. 7830).

Legal Significance of the Evidence of Contacts Between Petitioners and Alleged Co-conspirators. Evidence of contacts between supposed conspirators is significant as proof of an opportunity to conspire, that is, as proof of a time and place at which an agreement, express or tacit, could have occurred. Proof of opportunity, however, is not proof of agreement.[23] Other evidence must be added. If it is shown that the alleged conspiratorial objective was discussed in the joint presence of the alleged conspirators, it is possible to infer their concurrence in that objective.

Thus respondent might have shown that the advocacy of violent revolution was expressly discussed at meetings attended by petitioners and the alleged co-conspirators. Absent such evidence, respondent might have presented testimony to the effect that the teach-

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[23] "Presumptions of guilt are not lightly to be induged from mere meetings." *United States v. Di Re*, 332 U.S. 581, 593 (1948). "[C]harges of conspiracy are not to be made out by piling inference upon inference. . . ." *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1943).

ing of "Marxism-Leninism" was considered at such meetings and that petitioners understood "Marxism-Leninism" as a doctrine calling for the forcible overthrow of our Government. The plain fact, however, is that there is neither direct evidence nor evidence from which it could be inferred that either "Marxism-Leninism" or violent revolution ever were discussed between petitioners and the supposed co-conspirators.

For the most part the record is silent as to what occurred at the meetings attended by petitioner Richmond. This being so, there is of course a possibility that advocacy of "Marxism-Leninism" or of violent revolution were considered. However close scrutiny of the testimony indicates that no jury could reasonably have inferred that such a discussion actually occurred.

Consider, for example, the testimony that Richmond took elevator rides and received notes. This evidence is valueless unless it is first inferred that the testimony shows some contact between Richmond and an alleged co-conspirator. Such an inference, however, is no more likely to be true than is the opposite conclusion. Even if we accept the inference that some contact occurred, there is no way of knowing the content of that contact. A conclusion that the content was related to the supposed conspiracy would be the grossest kind of guess.

As to the meetings which Richmond attended, there is no evidence to connect any of them with the supposed conspiracy. The very composition of at least three of these gatherings makes such a connec-

tion highly unlikely: at the Young Communist League convention there were only two alleged co-conspirators among the 75 persons present; at the two local Communist Party conventions the ratio of supposed co-conspirators to others was 1 to 20. The "secret" board meetings of 1947-1949 were attended by a more select group and this may be true also of the district meetings. However, though the group may have been "select", the large majority of those present were not alleged co-conspirators. The fact is that these were Communist Party functions, and there is no evidence to justify an inference that advocacy of either forcible overthrow or of "Marxism-Leninism" were more likely than not to be discussed at such functions. The record shows that the Communist Party was concerned with and considered numerous international, national and local problems. These, as well as dozens of other things, might have been talked about at any meeting. Thus, to infer that illegal advocacy was discussed would be to engage in pure speculation. If the inference were made, it then would have to become the foundation for the pertinent conclusion: that petitioner Richmond because he was present during the hypothetical discussion impliedly agreed to the advocacy of violent revolution. Only in the Wonderland of Alice could such rank guesswork constitute substantial evidence.[24]

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[24] In *Hartzel v. United States*, 322 U.S. 680 (1944), the evidence showed that the petitioner had written articles attacking the war as a betrayal of America, condemning the President and denouncing our allies and the Jews; he mailed these articles to various persons and groups, including the United States Infantry Association, an organization which published the *Infantry Journal*,

Indeed, if the evidence justifies any inference as to the content of these meetings, it is an inference that there was no discussion of either "Marxism-Leninism" or violent revolution. The very witnesses who testified to petitioner's presence at these meetings were in attendance themselves. The *"secret"* board meetings were held in the home of the witness who testified concerning them and she stood at the door and greeted the participants as they arrived. Each of these witnesses remembered and testified to various details concerning the meetings, yet none of them ever reported any statements even remotely related to the revolution or violence or "Marxism-Leninism". It seems reasonable to suppose that if any such discussion had occurred, the witnesses would have so testified. From the absence of such testimony it can be inferred that there was no such discussion to report.

As to the meetings attended by petitioner Connelly, all five of them, they hardly suffice even as evidence of an opportunity to conspire. Only three alleged co-conspirators were present at any of these meetings, and never more than two at any one meeting. Two of the gatherings were ordinary Communist Party club meetings. The highest organizational body in-

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a magazine read by the armed services. This Court held the evidence insufficient to show that petitioner intended to cause insubordination, disloyalty or refusal of duty in the military forces. In the instant case there is no testimony to establish even a connection between petitioners and the idea of advocacy of violent revolution. Certainly, then, the evidence is insufficient to show any agreement by petitioners in respect to such advocacy. Agreement, after all, involves a state of mind. If the evidence was insufficient in *Hartzel*, it is doubly insufficient here.

volved was a county committee. Most important, however, is the fact that we know what was discussed at every one of these meetings. Respondent's witnesses were asked and they answered. Nowhere in the answers is there any mention of a statement or discussion concerning "Marxism-Leninism" or force and violence or any connected subject. Thus the evidence shows affirmatively that petitioner Connelly's attendance at these meetings cannot be the basis for an inference that he agreed with the objective of the alleged conspiracy.

Thus far the analysis of the evidence of contacts between petitioners and alleged co-conspirators yields this conclusion: The theory that an agreement can be inferred from joint presence during the discussion of the supposed conspiratorial objective is inapplicable here; there simply is no evidence that petitioners were present during any such discussion. However, the proof of meetings could have significance within the context of a different evidentiary theory. This theory, stated abstractly, is that an agreement can be inferred from proof of meetings plus proof that the alleged conspirators, acting separately, did what it is charged they conspired to do.

Thus if respondent had shown that petitioners were in some way connected with the teaching of "Marxism-Leninism", it might be permissible to infer that their conduct stemmed from an agreement with alleged co-conspirators. However there is no evidence in the record to show that either Richmond or Connelly participated in the teaching of "Marxism-

Leninism". Moreover, there is no evidence from which such participation could be inferred.[25]

Thus the fact that petitioners attended meetings with alleged co-conspirators proves simply that petitioners attended those meetings. It is a bare fact, unsupplemented by other relevant evidence, and incapable of supporting an inference that petitioners ever agreed, expressly or impliedly, to the advocacy of violent revolution.

We turn now to an analysis of the written and oral statements attributable to petitioners Richmond or Connelly. Statements there are. But as proof that petitioners joined the supposed conspiracy, this evidence is as insufficient as the evidence of the meetings.

3. Statements Attributable to Petitioner Richmond.

During the course of this case respondent has pointed to four written statements of petitioner Richmond, presumably on the assumption that they in some way prove the case against him.[26]

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[25]Of course, the crime of conspiracy can be shown to have been committed without proving accomplishment of the conspiratorial objective. Respondent's failure to prove that petitioners engaged in illegal advocacy does not *per se* mean that respondent's evidence is insufficient. Absence of such evidence, however, does preclude application of the evidentiary theory discussed in the text above.

[26]The full text of each of these statements is contained in Appendix B, pages v-xxiv, *infra*. Petitioner also wrote the book *Native Daughter* (Ex. GW, R. 6208). Respondent has never contended that this book, a biography of one Anita Whitney, tended to prove the charge against petitioner. Consequently we shall not prolong this brief with an analysis of this book's contents.

Two of the statements appeared in the columns of the *Daily People's World*. The first, published in November 1947, was entitled "Save the Peace" (Ex. FM, § 2, p. 1, R. 5106). In it petitioner says that the cold war is not the fault of the Russians but was caused by a change in United States foreign policy. He alludes to a group of persons which he denominates "Russia-haters", and says that war-like pronunciations by them have led to a deterioration of U. S.-Soviet relations. He states that world peace depends primarily upon cooperation between these two nations. The second article was published in July 1949. This was a statement, signed by Richmond and two other editors who were not named as co-conspirators, concerning "white chauvinism and anti-Mexican chauvinism" as these attitudes had appeared in the columns of the *Daily People's World* (Ex. 330, R. 3553-56). The statement points out examples of the asserted evils, discusses why they are undesirable, and pledges the editors to endeavor to avoid such occurrences in the future.

A third article, entitled "Strike Struggles—Some Key Conclusions", was published in a pre-convention discussion bulletin of the Communist Party (Ex. 191, R. 2834). Richmond labels the leadership of the A.F.L. and C.I.O. as a "sellout bureaucracy" because of its "'no-strike' pledge". He discusses some strikes which have occurred and concludes that the rank and file in the labor unions do not agree with their leadership. He states that "the capitalist, particularly the big monopoly section of capital" is the "enemy of the worker".

Can these articles be posited as the basis for a rational inference that petitioner conspired to advocate violent revolution? It is difficult to approach this question objectively. The very notion that the expression of legally permissible political views, no matter how unpopular, constitutes evidence of the alleged conspiracy is repugnant to the whole concept of free speech. Nonetheless, since that notion is implicit in respondent's case, it must be analyzed. The argument that such evidence is proof against petitioner would have to run thusly: By hypothesis, some of the alleged co-conspirators had agreed to advocate violent revolution; those persons and petitioners had in common certain beliefs concerning the 'cold' war, racial discrimination, etc.; from this commonality of belief it can be inferred that petitioner's views as to force and violence were the same as the hypothetical co-conspirators'; from this inferred concurrence of beliefs it can be inferred that petitioners and the supposed co-conspirators agreed to advocate forcible overthrow of the Government.[27]

The absurdity of the argument is obvious. Consider the initial inference. Because petitioner and another person both believe in racial equality, and because the other person also believes in violent revo-

[27] A similar line of reasoning was rejected by this Court in *Keegan v. United States*, 325 U.S. 478 (1945). There the evidence showed that petitioners had expressed ideas generally hostile to this country. These ideas undoubtedly were held by persons who would have done all in their power to discourage and prevent any military preparation by the United States. This background evidence, however, was held insufficient to establish that other statements made by petitioners constituted a "counsel to evade" military service.

lution, we are asked to deduce that petitioner believes in violent revolution. The political views which petitioner expressed probably are shared by most members of the Communist Party and in part by millions of Americans. Certainly it would be illogical to conclude that all these people believe in violent overthrow of the Government. It is no more logical to infer that petitioner holds such a belief. The basic error in the logic is the implicit assumption that there is a correlation between a belief in the views petitioner expressed and belief in force and violence. To say the least, the assumption is unsupported by any evidence in the record of this case. Consequently that assumption and the argument based upon it must be rejected.

The fourth article, "Use the Press as a Key Political Weapon," was published in a convention report of the California Communist Party (Ex. 186, p. 7, R. 1533). In this article Richmond purposes closer cooperation between the Communist Party and the *People's World* so as to boost the paper's circulation, improve its content and make the paper more effective in political campaigns around current issues such as the Mundt-Nixon bill. Also, in 1950, while at a local convention of the Communist Party, he spoke briefly on "the necessity of recruiting" (R. 3568-70). These statements indicate petitioner's support of the Communist Party. This was never denied. The question is whether he lent this support so as to strengthen a medium for the advocacy of violent revolution. Unless that question can be answered affirmatively, the statement concerning the newspaper and the talk about recruiting prove nothing. Neither the article

nor the talk in themselves are evidence of purpose. Nor is there other evidence of purpose. Thus it is just as reasonable to infer that petitioner's purpose was to further the Communist Party's legislative program as it is to impute a desire to advocate a proscribed doctrine. This is especially true in light of the fact that the evidence in this case shows that Richmond spoke on current political issues but fails to show that he advocated violent revolution.

One further statement by petitioner must be examined. In 1946 Richmond spoke to a group of Communists—none of them alleged co-conspirators—urging them to support the *Daily People's World*. In the course of this discussion he is reported to have "stressed the Leninist and Marxist approach to every issue of the paper" (R. 3953-54). This is the only testimony in the over 14,000 pages of record which links petitioner Richmond with "Marxism-Leninism". From this testimony it is reasonable to infer that petitioner had some knowledge of some aspect of the body of writings and theories denoted by the term "Marxism-Leninism". It is a long jump, however, from this inference to the conclusion that petitioner agreed to advocate violent overthrow. Unless legal precedent and the evidence in this case are both to be ignored,[28] it must be conceded that belief in "Marxism-Leninism" does not *in itself* show adherence to the doctrine of violent revolution. Consequently, if the testimony above is to have any significance, it must be shown that

[28]Respondent's theory that adherence to "Marxism-Leninism" is equivalent to advocacy of violent overthrow of the Government is considered at pages 82-91, *infra*. See also note 29, *infra*.

petitioner Richmond personally interpreted "Marxism-Leninism" as calling for the forcible overthrow of the Government.

There is no evidence, not a single line in the entire record, to show this. His reference to the "Leninist and Marxist approach" to the *Daily People's World* is not proof that he understood "Marxism-Leninism" as equivalent to violent revolution. Indeed, quite the contrary is true. Since he used the terms "Leninist" and "Marxist" in reference to the newspaper, it is reasonable to look to its columns as evidence of what he meant. The contents of those columns are completely inconsistent with the theory that Richmond believed in force and violence. There are editorials urging the reader to vote (Ex. AL, p. 1, R. 1883), discussions of current social problems (Ex. DX, R. 4295) and proposals for democratic action (Ex. 159A, p. 1, R. 5302), but not one word even hinting at violent revolution. Since there is such evidence of what petitioner's use of "Marxist" and "Leninist" meant, and since there is no evidence to show that he was referring to the proscribed advocacy, it would be contrary to both reason and law to infer from the above testimony that Richmond believed in violent revolution.[29] But even if the belief be inferred, what evi-

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[29]This Court has not infrequently considered whether evidence that a person subscribes, *in general*, to some broad political philosophy constitutes sufficient proof that the person adheres to a *particular* tenet that might be, but is not necessarily a part of that philosophy. *Keegan v. United States*, 325 U.S. 478 (1945); *Hartzell v. United States*, 322 U.S. 680 (1944); *Baumgartner v. United States*, 322 U.S. 665 (1944); *Schneiderman v. United States*, 320 U.S. 118 (1943). In each of these cases the Court's answer has been that such evidence is *not* sufficient. In all of those cases except *Schneiderman* the evidence was far stronger than here. In those cases, in addition to evidence that the petitioner

dence is there to show that the belief resulted in petitioner's alleged participation in the supposed conspiracy? To deduce such participation from his reference to the "Leninist and Marxist approach" would be to pile one uncertain inference upon another. This is not the stuff which substantial evidence is made of.

4. Statements Attributable to Petitioner Connelly.

Perhaps the most significant of petitioner Connelly's statements is the one he made in April 1947 at a Communist Party club meeting. The members of the club were discussing their respective reasons for having joined the Communist Party. Connelly's statement, as reported by respondent's witness, was that

> "the reasons he was a member of the Communist Party was that it afforded him an opportunity for organization and direction in the struggle; it additionally afforded the chance to develop leadership; and thirdly, enabled in this particular club, to organize and direct the policies of the union in which he was active" (R. 7637-38).

This statement is significant not only for what it does contain but even more so because of what is absent from it.

The statement contains nothing to indicate that petitioner was interested in violent revolution. Of course, since this was not a meeting of the alleged conspirators, it is arguable that Connelly would not be speaking frankly. However, if petitioner were an ad-

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adopted some general political line, there were actual statements by the petitioner closely related to intent or belief essential to the case against him. If such evidence is insufficient surely petitioner Richmond's statement concerning a "Marxist" approach to the newspaper is even less sufficient.

herent of violent revolution; it is only reasonable to suppose that he would have advanced this idea in some way. That Connelly did not, indicates that he was not a participant in the alleged conspiracy.

Concedely the statement is ambiguous. It does not specify the "struggle" in which he was interested, the purposes for which he wished to "develop leadership," nor the direction in which he wished to guide union policies. However, the record contains no evidence of a statement by Connelly even hinting at the notion that he wished to develop leadership or direct his union in a struggle for violent revolution. The statements he did make show that the "struggle" he was interested in was one having to do with the political issues currently facing the American people.

Thus in June 1940 he participated in a discussion of the coming presidential campaign, at which slogans were considered, to wit: "Don't support the imperialist war; vote Communist; vote for Browder and Ford" (R. 5527-29). In March 1941 Connelly attended a discussion concerning the European war and how Communists might mobilize sentiment against this country's participation in it; he said that Communists could do a good job in the trade unions (R. 5553-55). Three months later he was one of 75 Communists who met to consider the organization of support for a strike then in progress; apparently the Federal Government had indicated that it might step into the strike, and petitioner spoke on the "need to mobilize support of the strike . . . and the need for Communists

to get together and mobilize the city and protest government interference" (R. 5556-57).

Whatever the wisdom of Connelly's views on political candidates, international affairs and the settlement of strikes, he was entitled to hold those views and to seek to win adherents to them. Alleged co-conspirators probably agreed with Connelly, but such agreement hardly constitutes evidence that he joined with them in the supposed conspiracy to advocate violent revolution.[30] Indeed, the content of Connelly's expressions indicates just the opposite. Everything he said was directed at organizing the democratic expression of opinion on issues of immediate concern to the general public.

The record contains evidence of three other statements attributable to petitioner Connelly. In 1938 those delegates to an American Newspaper Guild convention who were members of the Communist Party held a caucus. They discussed how they might achieve the aims of the Communist Party at this convention. Those aims were the adoption of a resolution on the civil war in Spain and the election of a Guild executive board controllable by the Communist Party. Petitioner said he would do what he could to further those aims (R. 7733-40).

Connelly's support of a resolution on Spain proves no more than any other expression of opinion on a topic of current interest. That he agreed to work

[30]The argument that such a commonality of belief *would* be evidence against petitioner is discussed *supra* at pages 51-52.

toward a Communist-controlled executive board is irrelevant unless the purpose of attaining control was in some way linked with advocacy of forcible overthrow. If there was any such link, respondent's witness, whose memory was remarkable, failed to testify concerning it. Absent such evidence petitioner's statement provides no rational basis for an inference that he conspired as charged.

In 1945 one of respondent's witnesses, at that time a Communist Party member, asked petitioner why the Party had issued a letter criticizing the witness. Connelly told the witness not to talk to him about it but to take the matter up at Communist Party headquarters (R. 6454-55). The relevance of this evidence escapes us. The obvious inference is that petitioner simply did not know the answer to the question which the witness had asked; consequently Connelly suggested that the witness look elsewhere for information, and the logical place to find out about a letter issued by the Communist Party is at Party headquarters.

The last statement with which petitioner was connected occurred in May 1947. Connelly was present at a Communist Party club meeting; the subject being considered was "whether or not the Party would have to go underground" (R. 7635, 7638-40). What petitioner said, if anything, was not stated by respondent's witness. Nor do we know what the consensus of the meeting was. It would be reasonable to infer that someone said the Communist Party should go "underground." Assuming this to be true, such a statement is significant only if (a) Connelly agreed with it and

(b) such agreement constitutes proof of participation in the charged conspiracy.

In the first place, the evidence fails to show that petitioner was in favor of going "underground." The question being discussed was "*whether*" an "underground" would be necessary. It is as reasonable to suppose that petitioner's answer to that question was "No," as to suppose that he answered "Yes." This being so, the jury could not find that he did approve of the "underground," and the testimony loses all significance. However, even if Connelly had supported the "underground," this would be of no consequence.

In order for proof of support of an "underground" to be evidence of participation in the alleged conspiracy, it must be shown that the purpose of the "underground" was related to the purpose of the conspiracy. The only *possible* way in which an "underground" could serve the supposed conspiracy would be by concealing advocacy of violent revolution. Consequently, petitioner's hypothetical approval of the "underground" would be evidence against him only if his purpose was to conceal illegal advocacy. However, since the evidence shows only that Connelly was present when the "underground" was discussed, it is impossible to determine why he favored it, if he favored it at all.[31]

There is no evidence that anyone thought of an "underground" as a method for hiding illegal advo-

[31] The views of the trial court in *Flynn v. United States* as to the significance of presence at or participation in a discussion of the "underground" are contained at page 89, *infra*.

cacy. Indeed, the testimony is all to the contrary. Respondent's witness Lautner said that if the Communist Party were declared illegal, it would use the "underground" in order to "fight its way back to legality . . . get back to a legal status" (R. 2565). Another of respondent's witnesses said that Communist Party clubs were divided into smaller units—part of the "underground" system—because of fear of violence from private groups and harassment by Government agencies (R. 4070-71). *If* petitioner Connelly did agree that an "underground" was desirable, the only purposes he could have had in mind, according to the evidence, are those to which respondent's witnesses testified.

Having examined all the contacts between petitioners and the alleged co-conspirators, and having considered the statements attributable to petitioners, we turn now to the final phase of the record concerning them, their activities as editors of the *Daily People's World*.

5. *Whether Evidence That Petitioners Edited the Daily People's World Constitutes Proof That They Participated in the Alleged Conspiracy.*

Petitioner Al Richmond became managing editor of the *Daily People's World* shortly after the paper was founded (R. 546). By 1946, if not sooner, he had become editor and he continued to hold this position at the time this case was tried (R. 7795; 3571-72). Petitioner Philip Marshall Connelly held the position of Los Angeles editor at least since September 1949

(Ex. 749, p. 6, R. 11,599). The *Daily People's World*, although not technically published by the Communist Party, was substantially supervised and controlled by it. Its circulation among the general public was seen as a method for winning adherents to the Communist Party position on current political issues, and also as a means for making contact with persons who some day might be persuaded to join the Communist Party.

Such are the basic facts. Respondent contends that these facts constitute a foundation from which it can be inferred that petitioners participated in the supposed conspiracy. Although the argument is not spelled out, it presumably runs like this:

1. Publication of the *Daily People's World* is an activity which promotes the Communist Party, and petitioners must have known this.

2. The promotion of the Communist Party, as the indictment charges, was an object of the alleged conspiracy.

3. Since petitioners, by editing the *Daily People's World*, were helping the Communist Party, they were in effect aiding the alleged conspiracy.

4. Therefore petitioners were participants in the alleged conspiracy.

This argument is open to an obvious objection: It assumes the very point in issue. That petitioners in editing the *Daily People's World* were seeking to aid the Communist Party is obvious. However, the important question is not whether petitioners sought

to promote the Communist Party but whether they sought to promote it *as a medium for the advocacy of violent revolution.* Only if that was the purpose for which they edited the newspaper would their editorship be evidence of connection with the supposed conspiracy. Why petitioners did seek to aid the Communist Party is a question which is not answered by showing simply that they edited the *Daily People's World,* for the fact of editorship, although proof of support for the Communist Party, sheds no light on the purpose for which the support was given. Consequently the conclusion that editorship shows participation in the alleged conspiracy can be only an assumption, a possibility which, while theoretically susceptible of proof beyond a reasonable doubt, is not established by its mere assertion no matter how oft repeated.[32]

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[32]Assuming that the alleged conspiracy existed and that publication of the *Daily People's World* did in fact abet the conspiracy, the question is whether the nature of petitioners' activity is such that it can be inferred that they *knew* they were aiding the conspiracy. In this connection the case of *Direct Sales Co. v. United States,* 319 U.S. 703 (1943), is in point. The Court there held that it could be inferred that a person who sold grossly excessive quantities of narcotics to a doctor knew that the materials sold were being illegally used and thus was part of a conspiracy to violate the narcotics laws. In arriving at this decision the Court considered the applicability of *United States v. Falcone,* 311 U.S. 205 (1940). In that case there had been sales of sugar to persons who used this material in an illegal distilling operation; it was held that the evidence did not establish the seller's knowledge of the illegal use. In deciding the *Direct Sales* case the Court pointed out that sugar is an unrestricted commodity and therefore that its sale would not raise an inference of knowledge of illegal use; on the other hand, the purchase of unusually large quantities of narcotics would arouse suspicion.

If, by analogy, we consider the alleged conspiracy in the instant case as a "buyer," and petitioners as "sellers," it seems clear

If the alleged conspiracy actually existed and *if* petitioners knew of it and *if* they approved of it—if all these matters were proven, then the fact that petitioners edited the *Daily People's World* might constitute evidence of participation in the alleged conspiracy. However none of these "ifs" has been established by any of the evidence thus far examined—the testimony concerning meetings, the evidence of petitioners' statements, the fact of editorship. One body of evidence still must be considered, the constellation of fact surrounding the *Daily People's World.* Whether this evidence permits an inference that publication of the newspaper was part of the alleged conspiracy *and that petitioners knew this* is the question to which we now turn.

Content. Not one word expressly advocating or interpretable as advocating the violent overthrow of the Government has ever appeared in the *Daily People's World.* Quite the contrary. The paper has consistently appealed to its readers to seek remedies to asserted social evils through the use of democratic processes. Thus, in so far as the content of the *Daily People's World* is concerned, the evidence not only fails to support respondent's case but actually conflicts with it.

Support, Supervision and Use by the Communist Party. The Communist Party supported the *Daily*

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that no legitimate inference of knowledge of the conspiracy could arise from petitioners' activity. Publication of a newspaper is innocent on its face just as was the sale of sugar in the *Falcone* case. In addition, the publication of newspapers, being vital to the democratic process, should not be permitted to be the basis for inferences of criminal activity.

People's World, supervised its content and used the paper in its activities. The evidence shows that petitioner Richmond in general approved of this relationship between the newspaper and the Communist Party, and it would be reasonable to assume that petitioner Connelly also approved. These facts, however, are significant only if Communist Party support, supervision or use was manifested in some way which would have indicated to petitioners that behind the Communist Party stood the alleged conspiracy to advocate violent revolution.

Communist Party support of the *Daily People's World* took the form of money raising and paper selling (R. 1565-66, 5461, 5010). Petitioners participated in some of these activities (R. 1337-38, 1687; 5557-60) and undoubtedly would have been in favor of all of them. It is difficult, however, to see how any relevant inferences could be drawn from these facts.

Supervision by the Communist Party occurred even before the *Daily People's World* was established. The plans for the newspaper—finances, personnel, subscriptions, etc.—were discussed at a district meeting at which petitioner Richmond was present (R. 440-43). Subsequently, the content of the paper also was considered at district meetings, and if those present thought that some particular political or social problem was important enough, the *Daily People's World* would carry an article concerning that problem (R. 441-47). Petitioner Richmond was present at some of these meetings and it can be inferred that he agreed with the decisions which were made concerning the

newspaper's content. What those decisions were is best evidenced by what was printed in the columns of the *Daily People's World,* and as already noted, nothing even remotely connected with advocacy of force and violence is to be found. Consequently the fact of Communist Party supervision could not have revealed to petitioners that publication of the *Daily People's World,* though innocent on its face, was *really* a part of the alleged conspiracy.

The *Daily People's World* was used by the Communist Party in various ways. The record fails to show that petitioners had knowledge of any specific use and consequently it would be difficult to draw any inferences from this evidence. However, even if petitioners knew and expressly approved of the precise ways and instances in which the paper was used, it could not be inferred from this that they had knowledge of the supposed conspiracy. This becomes apparent when the actual evidence as to use is examined.

The Communist Party distributed the *Daily People's World* to the general public in order to convince people that the views expressed in the paper were correct. And within the Party itself articles in the newspaper were used as the basis for discussion of current political issues. In short, the Communist Party used the *Daily People's World* as a propaganda device. If the doctrine of violent revolution was among the ideas which the Communist Party sought to propagate by distributing and discussing the *Daily People's World,* the evidence would have some significance. The content of the paper itself, however,

demonstrates just the opposite: democratic action is what was proposed.

In distributing the newspaper to the general public the Communist Party sought not only to win adherents to a point of view but also to win new members. Assuming that petitioners knew this, their knowledge is of no consequence unless they also believed that there was a conspiracy which sought new Communist Party members as persons to whom the forcible overthrow of the Government could be advocated. There is no evidence that petitioners ever entertained any such belief.

There is evidence that alleged co-conspirator Dobbs, speaking to a meeting not attended by either Richmond or Connelly, said that the *Daily People's World* could be used "to issue instructions to party workers" (R. 4979-89). What kind of instructions were involved was not stated. However, a *Handbook For Club Officers* refers to editorials in the newspaper as guides to action (Ex. MF, p. 15, R. 11,056), and it may be that this was what Dobbs meant by "instructions". If so, and if it be assumed that petitioners knew that their editorials served this function, then it might be inferred that they agreed that the newspaper be so used. Assuming that this inference is true, the words actually printed in the *Daily People's World* show that the only matters in respect to which it could have issued instructions or been a guide were activities such as voting, writing congressmen, etc. Petitioners' assumed agreement that the *Daily People's World* be a guide to action such as this wholly

fails to show that they conceived of the newspaper as part of the supposed conspiracy.

Finally, at another meeting Dobbs said that those Communists who distributed the *Daily People's World* within their clubs should see to it that they would be able to continue to do so even if it became illegal to distribute the newspaper. Petitioners were not present at this meeting and there is no other evidence to show that they knew of Dobbs' statement. If we assume *arguendo* that petitioners had such knowledge, then we must inquire as to whether they would have approved of an illegal distribution: the fact that they edited the paper while it was legal to do so does not show what their attitude would have been if the newspaper were declared illegal. If we further assume that petitioners would have approved the hypothetical violation of law, we then are presented with the critical issue: Does approval of the illegal distribution of a newspaper which has never contained a word concerning violent overthrow of the Government constitute evidence of participation in a conspiracy to advocate that doctrine?

The posing of the question portends the answer. Indeed, what relationship is there between the fact proven (assumed) and the conclusion to be inferred? Two theories might be advanced: first, that the alleged conspiracy had planned to distribute the *Daily People's World* even in violation of law and that petitioners' agreement with such a distribution shows participation in the supposed conspiracy; second, that petitioners' willingness to violate the hypothetical

newspaper law is evidence that they would violate the laws under which they were indicted here.

As to the first theory, there is no evidence of facts which would have indicated to petitioners that the idea of an illegal distribution of the newspaper was hatched by the supposed conspiracy. Thus even if petitioners had known of Dobbs' statement, they would have considered it simply as one man's opinion as to what the Communist Party might have to do to preserve its newspaper. At the most, petitioners might have thought that the Communist Party—as distinguished from the supposed elite conspiratorial group—contemplated a violation of the hypothetical law. However, since there is no evidence to show that petitioners thought of the newspaper as a device for furthering advocacy of forcible overthrow, the fact that they would violate the law to preserve the paper does not establish any connection between them and the alleged conspiracy.

The second theory is preposterous. A law which would make the *Daily People's World* illegal would conflict with the whole concept of a free press, a concept which is basic to our heritage. If such a law were passed, numerous people of many and varied political beliefs would think it proper to disobey that law. There hardly is any correlation between such an attitude and a willingness to violate the Smith Act.

Miscellaneous Statements Concerning Newspapers. Various statements concerning Communist Party newspapers have been quoted by respondent. Respondent's theory is that these statements show that the al-

leged conspiracy conceived of newspapers as instruments for the fomenting of a violent revolution, that from this it may be inferred that petitioners were in sympathy with forcible overthrow, and that from this first inference it may be inferred that petitioners conspired to advocate violent overthrow of our Government.[33]

The first question is whether the statements could be interpreted as implying that newspapers of the United States Communist Party are a means for bringing about forcible overthrow. If that question is answered in the affirmative, we must ask whether the mere existence of the statements—*there being no evidence that petitioners even had knowledge of these statements*—is proof that *petitioners* conceived of the *Daily People's World* as a promoter of violent revolution.

We shall take the statements one by one, asking as to each whether it can be understood as implying violent revolution. The first statement is from the resolutions of the 1938 Communist Party convention:

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[33]See the brief filed by respondent as appellee in the proceedings herein in the Court of Appeals, pages 85-98. Also, in the Brief in Opposition to Petition for Writ of Certiorari herein, at page 50, respondent says, "The evidence showed that it is a Marxist-Leninist tenet that a Party newspaper is necessary to a successful revolution. . . ." We assume that respondent will continue to rely on this theory and therefore we consider it here. In doing so we wish to point out that the evidence relied upon by respondent consists of exhibits never proven to have been even seen by petitioners. Such evidence, of course, would not be competent to prove that petitioners joined the alleged conspiracy. *Glasser v. United States*, 315 U.S. 60, 74 (1942).

> "The greatest consideration must be given to finally and speedily organizing a mass circulation of the Party press. . . . Of equal importance and urgency with the recruitment of new members, is the rapid expansion of the Daily Worker, Sunday Worker, Daily Record and People's World, on a scale that would correspond to the growing role and influence of our party, as the indispensible instrument for realizing the present objectives and historic aims of the working class movement. . . ." (Ex. J, pp. 17-18, R. 1248).

The critical phrase in this passage is "the . . . historic aims of the working clas movement." It would be reasonable to suppose that those words refer to the establishment of a socialist society. However, that socialism is the end does not imply that violent revolution is to be the means. It is undisputed that petitioners in this case and in cases Nos. 6 and 7 believe in socialism. But whether they thought that its attainment in the United States would require the forcible overthrow of the Government has been one of, if not *the* crucial issue throughout this litigation. That issue is not decided simply by showing that they believe in a socialist state. Consequently the above-quoted statement, since it indicates only that Communist Party newspapers were considered imporant to the establishment of socialism, does not indicate that the editing of such papers was part of a plan for the advocacy of violent revolution.

The next four statements are from articles which appeared in *Political Affairs*, the semi-official Communist Party monthly magazine. From a seventeen

page article entitled "Improve and Build Our Communist Press," respondent extracted these quotes:[34]

> "Let us use our *Daily Worker* as the blacksmith's bellows to blow the smoldering fire of the people's resentment into a fighting flame of struggle and independent political action that will sweep America from coast to coast. . . .
>
> . . .
>
> "Our press, together with the Party as a whole, helps plow the ground, sow the seed of Marxist-Leninist understanding among the masses. Without such work, our Party will not be able to speed the growth of a class-conscious, united working class, schooled in struggle and theory, and led by a strong Communist Party" (Ex. 2, pp. 819, 826, R. 1582).

This statement, like the first one, says nothing about force and violence. It does speak of "struggle," but there is nothing to indicate that "struggle" implies forcible overthrow of the Government. Indeed, refer-

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[34]Respondent quoted two other passages from this same article. We have not quoted them in full since we cannot see how it can even be *argued* that they are relevant. The first (Ex. 2, p. 818) states that the Communist Party needs many newspapers; that those newspapers should "devote . . . major attention to the actual lives, conditions, and thoughts of the workers"; and that the political content of the newspapers should be improved and their circulation increased. The second (Ex. 2, pp. 821-22), in speaking of the attitude which Communists should assume toward the *Daily Worker*, points to the way in which the *Daily People's World* is handled in California as an example of correct attitude. The things which are desirable, the passage states, are (a) that "a great feeling of love for the *People's World* is demonstrated", (b) that the Communist Party has a full time State Press Director, (c) the paper has its own agents in each community, which agents are directly responsible to the newspaper although they "also serve on Party press committees if they are Party members", and so forth.

ence to another article in the same issue of the same magazine shows that the "struggle" contemplated related to political issues then current and was to be waged through the ordinary channels of legislative action:

> "To strengthen and broaden the people's *struggle* against the warmongers, reactionaries and profiteers, labor and all anti-fascist forces must now display far greater political and organizing initiative in developing and leading mass movements and *struggles* in behalf of the most important and pressing economic and political demands of the workers, veterans, Negro people, farmers, and city middle classes.
>
> "These demands include the need for effective price and rent controls; for a decent American standard of living, that is, for wages and trade union standards adjustable to meet any rise in the cost of living; for an adequate federal and state housing program; for an improved GI Bill of Rights and a bonus; for reduced low-income and higher corporate taxes; for the enactment of F.E.P.C., anti-lynching and anti-poll tax legislation, and for outlawing anti-Semitism; for public operation of the major government-built war plants" (Ex. 2, p. 791) (emphasis added).

Thus, if the material quoted by respondent is read in the context of the immediately preceding article, it becomes clear that the newspaper is considered as an aid to the development of activities ("struggles") which are by definition a part of the democratic process. The only counter argument that can be made is that the phrase "Marxist-Leninist understanding"

is found in the statement quoted by respondent, that this *could* refer to violent revolution, and consequently that it is *possible* to understand the quoted statement as implying that Communist Party newspapers are instruments of forcible overthrow. So be it. Possibilities such as this are not by any stretch of the imagination "substantial" evidence.

In the other articles from the magazine *Political Affairs* there are quotes from Lenin and Stalin on the importance of a newspaper. The implication intended by respondent is obvious: since a newspaper was important to the Russian Communists, and since a violent revolution occurred there, a reference to a Russian Communist's statement on newspapers implies that a newspaper of the Communist Party of the United States is an instrument of forcible overthrow. This line of reasoning is dubious on its face, and the actual statements which respondent has quoted do not substantially lessen the doubt.

The first such statement which respondent has cited is:

> "The goal of 100,000 [Communist Party] members is inseparably linked with the building of *The Worker* and the *Daily Worker*. Lenin wrote that the press was not only an 'agitator, but an organizer.' This statement is borne out by the experiences of our brother parties in France and Italy and all other countries" (Ex. 637, pp. 75-76, R. 4487).[35]

[35] Actually, the only part of the above quotation which respondent quoted was the quote from Lenin. We have added the preceeding and following lines to put the Lenin-quote in context.

The next is:

"In building the *Daily Worker* and *The Worker*, the American Communists are aided by the generalized experiences of other Communist parties and by the Leninist teachings on the role of a Communist press. In his historic fight to create a Marxist Party in Czarist Russia, Lenin placed the greatest emphasis on creating a newspaper which would unite and link together the then-existing separate Marxist organizations into a single Party. Lenin put forward and carried out a plan for the founding of *Iskra* (The Spark)—the first newspaper of the Revolutionary Marxists on an all-Russian scale—which made its appearance in 1900. . . .

"In his famous work *What Is To Be Done?* Lenin wrote:

> 'In our opinion, the starting point of all our activities, the first practical step towards creating the organization we desire, the thread that will guide us in unswervingly developing, deepening and expanding that organization, is the establishment of an all-Russian political newspaper. A paper is what we need above all; without it we cannot systematically carry on that extensive and theoretically sound propaganda and agitation which is the principal and constant duty of the Social-Democrats (read: Communists) in general, and the essential task of the present moment in particular, when interest in politics and in questions of socialism has been aroused among the widest sections of the population.'

"The teachings of Lenin on the role of the Communist press, which apply most urgently to-

day, have helped to stimulate and increase the activities of thousands of Communists and other friends of *The Worker*" (Ex. 265, pp. 74-75, R. 6608.)

These two statements say no more than what has already been noted: Distribution of Communist newspapers to the general public can serve as a means of gaining new Communist Party members. Is the fact that Lenin was quoted as authority for this proposition evidence that the new members were to be taught that violent revolution was necessary in the United States? It is conceivable that one reading these statements might so interpret them, but it seems highly unlikely. Certainly there is no general assumption that the citation of an authority implies agreement with everything the person cited ever did or said. Moreover, since the first statement refers to the Communist Parties of France and Italy, and since those Parties have been seeking to attain power by winning a majority of the voters, that statement is quite reasonably read as affirmatively declaring that such is the road to power in this country. At least this is as reasonable an inference as the conclusion that the Russian revolution constitutes the blue print.

The last of respondent's extractions from *Political Affairs* is as follows:

> "We should constantly look to the experience of the Bolshevik Party of Lenin and Stalin, which teach us the vital role of the press in the struggle of the working class. The Bolshevik press played a vital part in raising the class con-

> sciousness of the Soviet workers, in building the strong ties between the Party and the masses. *Pravda* was in the center of every struggle, of every united-front movement. In the words of Comrade Stalin: 'The *Pravda* of 1912 was the laying of the cornerstone of Bolshevism in 1917'." (Ex. 268, pp. 169-70, R. 7524).

What this statement seems to say is that newspapers were important in Russia and this shows that they are important in the United States today. The statement does not say that a newspaper of the United States Communist Party is important as a fomenter of violent revolution. The inclusion of the quote from Stalin, since it says that *Pravda* played a part in bringing about the Russian revolution, *might* be taken as implying that Communist Party newspapers in this country serve a similar function. This is a possible interpretation, a possible inference. But one reading the statement might as easily take the Stalin quote simply as an illustration of the degree of importance which attaches to newspapers. These conflicting interpretations are possible if the reader sees only the statement quoted above. However, if he has read the preceding paragraphs there should be no ambiguity, for the author quite specifically states the function of the Communist Party newspaper in the United States:

> "The main task of the Communist press in the United States today is to help develop a broad united-front movement of the working class and its allies for democracy, peace and security. Our press must be a powerful organ providing day-to-

> day guidance in the struggle to bridle the warmongers. It must be a force in the struggle for Negro rights and in labor's fight for higher wages and against reactionary measures directed against it. . . ." (Ex. 268, p. 168).

In addition to the quotes from *Political Affairs*, respondent has quoted from a section in the *History of the Communist Party of the Soviet Union* (Ex. 28, R. 1362). This section, some ten pages in all, was referred to by alleged co-conspirator Dobbs during two meetings attended neither by Richmond nor Connelly (R. 4979-4989; 5014-5018). From that ten-page section respondent extracted and quoted these three sentences:

> "[T]he Party trained a new generation of revolutionary workers—the Pravdists. During the imperialist war this section of the workers remained faithful to the banner of internationalism and proletarian revolution. It subsequently formed the core of the Bolshevik Party during the revolution of October 1917" (Ex. 28, p. 159).

These three sentences convey the impression that *Pravda* itself was a kind of training ground for violent revolutionaries. This impression is significant if it is reasonable to suppose that Dobbs would be understood as saying that the *Daily People's World* also was such a training ground.

The impression as to the meaning of the quoted passage arises from the quotation of the phrase "a new generation of revolutionary workers—the Pravdists." If one reads only the matter quoted by re-

spondent, he assumes that "the Pravdists" were those persons who were working on the newspaper *Pravda*. However, a sentence which appears earlier in the section to which Dobbs referred showed that the word "Pravdists" does not refer to persons working on *Pravda* but to the Russian Communists in general: "The Bolsheviks at that time were called 'Pravdists'" (Ex. 28, p. 153). However, even if *Pravda* had been a school for violent revolutionaries, it would not follow from Dobbs' citation of the discussion in the *History of the Communist Party of the Soviet Union* that Communist Party newspapers in the United States were to serve the same function. The witness who testified to Dobbs' statement said that Dobbs "made an *analogy* . . . to the importance of the paper [the *Daily People's World*] by recalling the effect and value of newspapers during the time of the Russian revolution and the period immediately preceding it" (R. 4986) (emphasis added). Thus Dobbs' reference is most reasonably understood simply as an illustration of the *generalization* that newspapers are important, rather than as a declaration that the *Daily People's World* serves precisely the same purpose as *Pravda* did.

The last of respondent's quotations concerning newspapers consists of two passages from a book by Lenin. There is no evidence that these specific passages were ever referred to by anyone in this country. They are as follows:

> "Everyday propaganda and agitation must bear a genuine Communist character. All organs of

the press belonging to the party must be edited by reliable Communists who have proved their loyalty to the cause of the proletarian revolution" (Ex. 514, p. 202, R. 3815).

"Without a revolutionary struggle for the freedom of the Communist press that will enlist all the masses, preparation for the dictatorship of the proletariat will be impossible" (Ex. 514, p. 174).[36]

If the first passage is significant at all, it is because the phrase "proletarian revolution" is used. The use of this phrase is important only if it is equivalent to "violent revolution." The words themselves are ambiguous. The word "revolution" denotes only a radical change, not a change achieved through forcible overthrow of the Government. The adjective "proletarian" does not imply force and violence. Of course the phrase *might* be interpreted as meaning "violent revo-

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[36]Respondent quoted another passage from Lenin's book. We quote it here, rather than in the text above, because the argument for its relevancy completely escapes us:

"In order to combat this [depriving the revolutionary proletariat of the press by deceit, etc.] the Communist Parties must create a new type of periodical press for mass distribution among workers: first legal publications, which must learn, without calling themselves Communist, and without announcing their affiliation with the Party, to utilize every scrap of legality in the same way as the Bolsheviks did under the tsar in 1905; secondly, illegal leaflets, even of the smallest size, and issued at irregular intervals, but printed in a large number of printing offices by the workers (secretly, or if the movement has become strong, by the revolutionary seizure of printing plants), which shall give the proletariat free, revolutionary information and revolutionary slogans" (Ex. 514, p. 174).

As noted in the text above this passage from Lenin's book was never shown to have been referred to by any one in this country, and of course there was no evidence connecting petitioners with it.

lution," but whether it is so interpreted, will vary from person to person. In the second passage we find the phrase "dictatorship of the proletariat." Those words refer to the government apparatus of a socialist state and imply nothing whatsoever as to how the socialist state is to come into being.

Having examined the various statements concerning newspapers, what conclusion can be drawn as to how they might be interpreted? First of all, none of them expressly proclaim that the publication of a Communist newspaper is part of a plan for advocating violent revolution in the United States. In some of the statements Communist Party papers are portrayed as important to the "struggle," the realization of the "historic aims of the working class movement," etc. However there is no equation of those phrases with "violent revolution," and the context of these statements refers expressly to traditionally democratic activities such as campaigning for the passage of legislation. As to the statements containing quotes from Lenin and Stalin and the reference to the *History of the Communist Party of the Soviet Union,* these appear to be intended simply as an example by way of analogy of the importance of newspapers. This, at least, is the way one reading those statements would be most likely to understand them. If they *can* be understood as implying that Communist Party newspapers are instruments of violent revolution in the United States, the possibility that they *would* be so understood is negated by the context in which the statements are found.

However, in order to proceed with the argument in all its facets, we will assume that *someone* might interpret the statements as indicating that Communist Party newspapers are a device designed to abet the forcible overthrow of our Government. The next inquiry is: Did *petitioners* so interpret those statements? Preliminarily it must be asked whether petitioners even knew of the statements. There is no direct evidence to show that they did. Some of the statements were extracted from articles in *Political Affairs,* a magazine sold within the Communist Party, and one statement was from the Communist Party's 1938 convention resolutions. That petitioners read those statements is a possible inference. However, since it may be assumed that petitioners did not obtain copies of all of the materials sold or distributed within the Communist Party and also that petitioners did not read all of everything they did obtain, it would be reasonable to conclude that they never saw the statements in question. This being so, there is no substantial evidence to show that petitioners had knowledge of the statements and consequently the statements would not even be competent as evidence on the issue whether petitioners participated in the alleged conspiracy.

However, if it be assumed that petitioners did know of the statements, then the evidence would be competent, but its probative value would be nil. Mere knowledge of the statements provides no basis for determining how the statements were understood. We have *assumed arguendo* that someone *might* understand the statements as saying that a Communist

Party newspaper was part and parcel of a plan for the advocacy of violent revolution, but this assumption, itself in actual conflict with the evidence, is not proof that *petitioners* so interpreted the statements. Yet absent such an interpretation, the fact (assumption) that petitioners knew of the statements provides no basis for inferring participation in the alleged conspiracy.

Such, however, is the inescapable conclusion: The various statements concerning the importance of a Communist Party newspaper in no way show that petitioners Richmond and Connelly entered into the supposed conspiracy to advocate violent revolution.

6. Membership in the Communist Party.

We have considered the evidence concerning meetings, statements made by petitioners, and their editorship of the *Daily People's World*. None of these things in themselves, either separately or in conjunction with one another, constitute even the slightest evidence of participation in the alleged conspiracy. It also is true that membership in the Communist Party in itself would not be proof that petitioners were guilty. The final question is whether the fact that petitioners engaged in the various activities already examined *as members of the Communist Party* —whether this combination of facts is substantial evidence that they were a part of the supposed conspiracy.

The only theory under which membership in the Communist Party could significantly supplement the other evidence would be this:

1. The Communist Party was organized by various persons who in forming the organization proclaimed that it was based on "Marxism-Leninism" and that the teaching of "Marxism-Leninism" was an essential part of the Communist Party program.

2. This teaching of "Marxism-Leninism" is synonymous with the advocacy of the violent overthrow of the Government.

3. The evidence shows that petitioners knew that "Marxism-Leninism" as advocated within the Communist Party was equivalent to the advocacy of force and violence.

4. If petitioners knew this and still engaged in activities which supported the Communist Party, then they must have intended to promote advocacy of violent revolution.

5. This intent, combined with petitioners' activities, constitutes participation in the conspiracy.

That the Communist Party advocated "Marxism-Leninism" is undisputed. That petitioners knew this unquestionably is true. We think that there is no substantial evidence to establish any of the other assertions contained in the above argument.[37] However, in so far as petitioners are concerned the validity of the argument depends, in the first instance, on whether

[37] The briefs filed in cases Nos. 6 and 7 discuss the sufficiency of the evidence to show that the petitioners there interpreted "Marxism-Leninism" as involving the violent overthrow of the Government of the United States. We agree with the contentions therein, that the evidence is insufficient as to each petitioner.

the evidence shows that they understood that the teaching of "Marxism-Leninism" within the Communist Party constituted advocacy of violent overthrow of the Government of the United States. It is that question which we shall consider here.

There is no direct evidence at all concerning petitioners' understanding of "Marxism-Leninism." They were not even shown to have attended any classes, read any books, participated in any discussions on that subject. Absent direct evidence, it would be necessary to show that petitioners possessed some attribute from which it could be inferred that they understood the advocacy of "Marxism-Leninism" to be an advocacy of violent revolution. The only evidence there is, however, is the proof that petitioners were members of the Communist Party and as such engaged in wholly lawful activities. If from this evidence it can be validly inferred that petitioners understood "Marxism-Leninism" as synonymous with force and violence, then the inference could be equally valid as to each and every Communist Party member. To say that petitioners so understood when other Communists did not would be arbitrary. There would be no answer to the question, "Why petitioners if not the others?"

The question then is whether it is valid to conclude that a person who is a Communist *necessarily* equates "Marxism-Leninism" with advocacy of forcible overthrow of the Government of the United States. There is no proof in the record that all members of the Communist Party understood "Marxism-Leninism" as equivalent to violent revolution. Certainly such a uni-

form understanding cannot be assumed. "Marxism-Leninism," after all, is not a mathematical formula. *Schneiderman v. United States*, 320 U.S. 118 (1943). It purports to be a system of philosophy governing all forms of human activity and providing the answers to such basic problems as those of epistomology, the interpretation of history, and so forth (R. 2572). Has there ever in the history of mankind been a philosophy so clear cut that all men, even all who called themselves adherents, understood it in the same way? There is no such uniformity in the interpretation of religious systems. Constitutions receive many and varied interpretations; their meanings change with time and circumstances. Even statutes, immeasurably more specific and limited than the body of materials denominated "Marxism-Leninism," are often subject to different interpretations, claims of "plain meaning" notwithstanding.

That such divergencies of understanding should exist is almost inevitable. Philosophies, ideas, are communicated from person to person by the use of words. Certainly our present-day knowledge of semantics makes it clear that the communication process is inherently ambiguous. As members of the legal profession we constantly encounter such ambiguities.

These general observations are particularly significant in the context of the facts of this case. Assuming that "Marxism-Leninism" can be interpreted as calling for the violent overthrow of the Government, the fact is that the Communist Party disclaimed the use of force and violence in its constitution (Ex. 21, R.

1518; Ex. 153, R. 2089).[38] How then could it be assumed that all Communists understood "Marxism-Leninism" to equal force and violence? Actually the evidence shows that the books which were a part of "Marxism-Leninism" were interpretable in different ways and in fact were interpreted differently by members of the Communist Party (R. 2602, 2657, 4423-26, 8542-50). How then can it be inferred that petitioners *because they were members of the Communist Party* understood "Marxism-Leninism" in any particular way?

The answer, we think, is clear. The inference is *not* permissible. It is contrary to all we know about the history of philosophies. It conflicts with scholarly thought and everyday experience in the field of semantics. It could be indulged only if uncontradicted evidence is to be put neatly to one side and conveniently disregarded. If, in cases such as this, the "substantial evidence" rule is to have any meaning, there must be a requirement that something other than a bare association with "Marxism-Leninism" be proven. Certainly the minimum which should suffice would be direct evidence showing that the particular defendant specifically understood "Marxism-Leninism" as a call to the violent overthrow of the Government of the United States.

That such evidence should be present before the case can be submitted to the jury was recognized by the

[38] In the *Dennis* case there was testimony that the defendants intended and understood this disclaimer to be a cloak for alleged conspiracy. There is no such evidence in the instant case.

trial court in *United States v. Flynn*, Criminal No. 137-7, S.D.N.Y. (1953). In that case the court directed verdicts of acquittal as to two defendants, a Mr. Begun and a Mr. Gerson. In discussing the general question of what kind of evidence is necessary to show knowledge of the alleged conspiracy, the court said:

> "The Court: We are agreed that the crucial question is knowledge, to bring something home personally to the defendant."[39]
>
> "The Court: . . . I think you have to bring it home more closely than saying, 'Why, he was so active in the organization that it just must have seeped into him somehow or other.' I think you have really got to get him in contact with that tenet [the doctrine of violent overthrow of the United States Government] in his activities in some way or other. That is what I should say was necessary.
>
> . . .
>
> The Court: . . . I think there must be some showing that the particular activities were such as to bring them in contact with the particular tenets of the Party that are treated as illegal in this case. . . ."[40]

The court then went on to consider whether the evidence as to each defendant was sufficient to submit the case to the jury. The evidence as to Begun showed that in the 'thirties he was Legislative Secretary of District 2 (New York) of the Communist Party and later became Educational Director of District 2. He

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[39] Transcript of Record, p. 9951, *United States v. Flynn*, *supra*.

[40] *Id.* at 9961-62.

was seen around Communist Party headquarters in the early 'forties. He said that he was interested in Communist infiltration of the Farmers' Union of New York. He attended the 1945 New York State Convention of the Communist Party and thereafter was County Organizer for Bronx County and a member of the New York State Committee and the New York State Board. He was a student at the 1947 Communist Party National Training School. He attended the 1948 Communist Party State Convention. In the fall of 1949 he attended a meeting in New York pertaining to the "underground" organization of the Communist Party. And a witness who said he was assigned to distribute certain literature to Communist Party *leaders* gave copies to *this* defendant.[41] The court held that this evidence was insufficient to go to the jury. As to the testimony concerning the defendant's attendance at the Communist Party school, the court pointed out that there was no specific showing that the defendant while in attendance came into contact with the idea of forcible overthrow:

> "The Court: I think Begun is the next.
> Mr. Marks [Government counsel]: Yes, sir. With reference to Begun, we have in addition to the fact that he held office since the thirties, his attending as a student the 1947 National Training School. . . . That brings knowledge home to him very directly.

[41] The summary of the evidence concerning Begun is taken from the memo in opposition to motions for judgment of acquittal filed by the Government in *United States v. Flynn, supra.*

"The Court: There was a great deal of difficulty in showing that the defendant Begun was there and heard everything that was said."[42]

And, when counsel for the Government pointed out that Begun had participated in a discussion of the "underground," the court said:

"The Court: Well, you and I differ about the underground. It seems to me something more than the fact that people want to keep their activities secret is necessary to show that their activities are illegal, and certainly something more is necessary . . . than secret activity . . . to show that he knew what Budenz thought Marxism-Leninism was."[43]

The evidence as to the defendant Gerson showed that he had been a member of the Communist Party since 1935, was on the staff of the *Daily Worker* in the early 'thirties, and was seen at the offices of the *Daily Worker* and the offices of the National Committee up until 1943. After 1945 he was Legislative Secretary of the New York state organization, a member of the State Committee of the Communist Party and attended State Board and state Organization Committee meetings. In 1948 he attended the National and the New York State Conventions of the Communist Party. In addition he was present during a speech on "concentration in New York County," and he is reported to have said that a certain Mr. Dunn deserved praise because he represented "the Marxist-Leninist posi-

[42]Transcript of Record, p. 9978, *United States v. Flynn*, *supra*.
[43]*Id.* at 9980.

tion."[44] The discussion of the sufficiency of this evidence was, in part, as follows:

"The Court: What about Gerson?

Mr. Marks: With respect to the defendant Gerson, your Honor, he was a member of the Party and during the early thirties was on the staff of the *Daily Worker*. Of course, that has been shown to be the Party organ and the medium of carrying out Party policy and Party expression to the membership. So I place considerable stress on that. That is not just Party membership; that is something else again.

. . .

The Court: Well, that is rather passive. Can you point to any statements by him?

Mr. Marks: We have another thing, your Honor, prior to the indictment period: In a conversation with Budenz where the defendant praised somebody named Dunn because he represented the Marxist-Leninist position. . . .

The Court: You must rely on something to indicate that when Gerson said Marxist-Leninist position he meant the same thing that you do.

Mr. Marks: We have another thing, your Honor. . . . we have specific evidence of his having been present when the very important Tormey report on concentration in New York County was delivered. Your Honor will recall that is the report which stresses the transportation industry and different forms or phases of transportation as concentration tasks in New York.

The Court: Was there really anything in the Tormey report, except that it would be a good

[44]The summary of the evidence concerning Gerson is taken from the memo in opposition to motions for judgment of acquittal filed by the Government in *United States v. Flynn*, *supra*.

thing for the Communists to concentrate in these industries, or anything about Marxism-Leninism, or force and violence?

Mr. Marks: Nothing overtly about force and violence, your Honor. . . ."[45]

It seems quite clear that had the trial judge in the *Flynn* case been presiding over the trial of the instant cause, the cases against Richmond and Connelly never would have been submitted to the jury. As with Gerson and Begun, the evidence concerning petitioners here shows simply that they were members of the Communist Party and as such participated in lawful activities. There is no evidence to show that they understood the Communist Party's adherence to "Marxism-Leninism" to constitute advocacy of force and violence. This being so, petitioners' attendance at meetings, work on the *Daily People's World*, etc. do not constitute a sound foundation—substantial evidence—from which to infer participation in the supposed conspiracy. These activities prove only what they show on their face, lawful endeavors in the fields of speech, press and assembly.

C. The Evidence Concerning Intent

An essential element of the crime with which petitioners Richmond and Connelly were charged is an intent to overthrow the Government of the United States by force and violence as speedily as circumstances would permit. The only matters in the record

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[45]Transcript of Record, pp. 9984-86; *United States v. Flynn*, *supra*.

relevant to whether petitioners did so intend were set forth in the discussion of the evidence concerning participation in the alleged conspiracy—there simply is nothing else in the record even remotely concerning Richmond or Connelly. That evidence is insufficient to establish the requisite intent for the same reasons that it is insufficient to prove participation in the supposed conspiracy. Indeed, a discussion of the intent problem really is superflous. However, since we wish to explore all facets of respondent's case, we shall ignore the fact that there is no evidence to show that petitioners joined the alleged conspiracy and proceed to the question of intent.

Since there is no evidence concerning intent other than that previously examined, the only theory upon which it could be contended that the testimony establishes the charged intent is this: The evidence shows that petitioners agreed to advocate violent overthrow of our Government and from this agreement it can be inferred that they intended to cause such overthrow as speedily as circumstances would permit. The initial difficulty with such a theory is that there simply is no proof that petitioners did agree to advocate force and violence. This is not the only difficulty. However in order to reach and analyze the others it is necessary to overlook the absence of support for the basic premise. Consequently we shall assume for purposes of the ensuing discussion that there was proof that petitioners agreed to advocate violent revolution. It should be clear that we think such an assumption utterly unwarranted, indeed contradicted, by the evidence in this

case. We make the assumption only because it otherwise would be impossible to examine the full length of the chain of inferences upon which respondent relies to hold its case together.

Assuming, then, that petitioners joined in the alleged conspiratorial agreement, there are two problems as to intent: whether it can be inferred from the inferred agreement that petitioners intended to cause violent overthrow of the Government of the United States; whether it can be inferred that they intended to cause it "as speedily as circumstances would permit."

1. The Intent to Overthrow the Government by Force and Violence.

In most conspiracy cases the only intent which need be proved is the intent to accomplish the object of the conspiracy. This state of mind is easily inferrable from the fact that the defendant did conspire. If a person *agrees* to do *x*, it is reasonable to infer that he *intends* to do *x*. Thus if it is proven that a defendant agreed to rob a bank, it can be inferred that he intended to rob the bank. In the instant case the indictment charges an agreement to *advocate*. Thus, if it be assumed that petitioners agreed to advocate, it might be inferred that they intended to advocate. Such an intent, however, would not suffice here. Here it is necessary to prove not only that petitioners intended to *advocate* but also that they intended to *cause* violent revolution.

Can the intent to cause forcible overthrow be inferred from an agreement to advocate it? There seems

to be no logical barrier to such an inference; there is some connection between an agreement to advocate x and an intent to accomplish x. However, while the inference is logically possible, it is not logically necessary; there is nothing illogical about a man who would advocate violent revolution although he personally would not wish to cause the revolution itself. The jump from words to action is a big one. Consequently, whether the intent to cause violent overthrow can be inferred from an agreement to advocate is a question of fact rather than logic. The answer to that question depends, at least in part, upon the solidity of the foundation which must support the inference.

That foundation is the inferred agreement to advocate. It is pertinent, therefore, to note again the type of materials out of which that foundation was constructed. It was necessary to infer the agreement from activities which are all innocent on their face and some of which—speaking on political issues, editing a newspaper, etc.—constitute the lifeblood of a democracy. Assuming, nevertheless, that the agreement might be inferred, would not a further inference based upon it rest on mounds of sand? The type of thing petitioners did indicates that they looked to democratic processes as the means of change. Thus, even assuming their agreement to *advocate* violent revolution, it would be quite reasonable to suppose that they looked upon violence only as a last resort and did not personally wish to foment forcible overthrow. This, at least, would be as reasonable an inference as the conclusion that they did intend to overthrow the Government by force and violence.

2. The Intent to Cause Violent Revolution "As Speedily as Circumstances Would Permit".

In order to examine the final link in respondent's chain of inferences it is necessary to add to the assumptions heretofore made. We previously assumed that there was proof that petitioners conspired as charged. Now we must assume that there was evidence to show that they intended in some general way to cause violent overthrow. Having laid this foundation —a foundation which finds no support in the record of this case—we can proceed to examine the question whether petitioners intended to cause force and violence "as speedily as circumstances would permit."

This problem has special significance constitutionally. It was the interpretation of the Smith Act, in the *Dennis* case, as involving an intent to cause violent overthrow "as speedily as circumstances would permit" which sustained that statute in the face of constitutional attack: The fact that violent revolution was contemplated "as speedily as circumstances would permit" imported an element of immediacy which served in part to satisfy the clear-and-present-danger test.[46]

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[46] *Dennis v. United States*, 341 U.S. 494, 509 (1951); *Dennis v. United States*, 183 F.2d 201, 213-14 (2d Cir. 1950).

Judges Hastie and Maris, dissenting in *United States v. Mesarosh*, 223 F.2d 449, 459, 461 (3d Cir. 1955), state, "In the leading opinion in the Dennis case, Chief Justice Vinson stressed the fact that the jury must have found . . . . that advocacy was directed toward violent action 'as speedily as the circumstances would permit.' It seems to have been his view that this much proximity was necessary to satisfy the clear and present danger test, which he recognized as a measure of constitutional limitation on Congressional power in this kind of case."

Consequently it is especially important in the instant case, having assumed *arguendo* that petitioners intended to cause force and violence, to see whether they intended to cause it "as speedily as circumstances would permit."

The first question is what does "as speedily as circumstances would permit" mean?[47] Conceivably the phrase could have reference to *any* time in the future, whether that time be one, ten, thirty, a hundred, five hundred or some indefinite number of years from now. Such an interpretation, however, would make the phrase redundant and unnecessary. It would have sufficed for the Court to have said that a defendant must have intended simply to forcibly overthrow the government. The phrase "as speedily as circumstances would permit," if it is to add something to the phrase "intend to overthrow the Government by force," must import some element of immediacy.[48] That this phrase

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[47] This problem has not heretofore been considered by this Court. Since the sufficiency of the evidence was a question not before the Court in the *Dennis* case, the Court was not called upon to decide what facts will suffice to establish an intent to violently overthrow "as speedily as circumstances would permit."

[48] "A Marxist group may lawfully attempt to persuade people . . . that the writings of Marx and Lenin and similar dogma constitute the only acceptable guide to struggle for a desirable kind of society. Thus must be coupled with some call to unlawful action against the government to make the conduct punishable. *But a call to action in the indefinite future is a meaningless contradiction of terms.* Some meaningful orientation in time, whether by specification of the time when action is to be taken or otherwise, is an essential part of every call to action. Thus, the government has found it necessary here; as in the Dennis case, to charge a design to cause violent action as soon as circumstances will permit. . . ." Judges Hastie and Maris dissenting in *United States v. Mesarosh, supra,* note 46, at 461 (emphasis added).

was intended to be so construed is clear from the fact that it originated in the context of the clear-and-present-danger rule.

Just what must be proven to satisfy the element of immediacy is a question we would not even attempt to answer. It seems obvious, however, that if the most that might be inferred from the evidence was that a defendant had some *generalized* intent in respect to violent overthrow—an intent which, if oriented at all, was directed to the remote future—then the defendant could *not* be said to have intended violent revolution "as speedily as circumstances would permit." If this hypothetical intent would suffice, then the "as speedily" phrase would be meaningless surplusage.

What does the evidence in this case show as to petitioners' supposed intent—*assumed arguendo*—to cause violent overthrow. In the first place this assumed intent is predicated upon a lengthy chain of inferences. Not only are these inferences tenuous in the extreme, but, moreover, they provide no basis for orienting the intent time-wise. In other words, there simply is no evidence upon which to base any conclusion as to the historical period to which petitioners' assumed intent had reference. This being so, there is no basis for concluding that the supposed intent involved even the slightest element of immediacy. Consequently there is no evidence to support a finding that petitioners intended to cause violent revolution "as speedily as circumstances would permit."[49]

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[49]Respondent no doubt will rely upon the theory that petitioners were members of the Communist Party, that "Marxism-Leninism" is a part of that organization's program, that adherence

If what petitioners did is any guide, then their intent must have been to influence people on the issues of the day—higher wages, racial equality, foreign policy, etc. These were the things spoken of in the *Daily Peoples World*.[50] These, so far as the evidence shows, were the matters discussed at the meetings which petitioners attended.[51] These were the things on which petitioners themselves spoke and wrote.[52] Such evidence is basically inconsistent with the theory that Richmond and Connelly contemplated forcible overthrow as speedily as circumstances would permit.

If the evidence in this case shows an intent to cause forcible overthrow "as speedily as circumstances per-

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to "Marxism-Leninism" equals adherence to violent revolution, etc. There are two objections to this theory. One objection—that "Marxism-Leninism" is a body of doctrine which must be interpreted and that there is no testimony to show that petitioners interpreted it as involving violent overthrow of the United States Government—has been discussed previously. See footnote 19 and pp. 40-41, *supra*. An additional objection; most applicable to the instant problem, is that a mere showing of general adherence to forcible overthrow would not constitute proof of an intent to overthrow "*as speedily as circumstances would permit.*"

Judges Hastie and Maris, dissenting in *United States v. Mesarosh, supra*, note 46, at 463-64, make this point in discussing the testimony of Government witness Lautner, much of which testimony was repeated in this case: "Lautner did not point to a single thing indicating that the 1945 program [of the Communist Party] contemplated . . . teaching that the time had now come to work for the overthrow of the existing government as soon as possible. . . . [T]his distinction is of basic importance in all constitutional theory of restrictions on utterance permissible under the First Amendment. The line which the courts try to draw distinguishes punishable incitation to insurrectionary action from permissible teaching that at some time in the future violence is inevitable and the 'proletariat' must be ready for it."

[50] See pp. 17-19, *supra*.

[51] See pp. 41-44, *supra*.

[52] See pp. 49-60, *supra*.

mit," then that phrase, designed as a limitation of the Smith Act, is no limitation at all. This Court did not intend that so basic a rule be converted into an empty phrase. This point in itself warrants a reversal of the decisions below.

II.

CONVICTION OF PETITIONERS ON THE FACTS PROVEN IN THIS CASE VIOLATES THE FIRST AMENDMENT.

In *Dennis v. United States* this Court defined the elements of the conduct proscribed by the Smith Act and held that the statute as thus interpreted did not violate the guarantees of the First Amendment. Whether the defendants in the *Dennis* case had conspired as charged, and whether they were proven to have the requisite intent were questions not before the Court. Those questions, in respect to petitioners Richmond and Connelly, are now presented for consideration.

These problems of proof are as significant and important constitutionally as the issues considered in the *Dennis* case. In passing upon the validity of the Smith Act the Court recognized and stated that it involved restrictions upon freedom of expression. It was felt, however, that the construction of the statute had confined those restrictions within permissible bounds. But the *Dennis* formula can be no better than the rules which determine its applicability to any given set of facts. If juries are permitted to engage in speculation and guesswork, to make arbitrary inferences or to choose between equally plausible inferences, the con-

stitutional limitation is converted from a guarantor of freedom into the means by which freedom is repressed. Thus the way in which the Court marks out the boundaries within which evidence will suffice to prove a conspiracy to violate the Smith Act is as much a determinant of the meaning of free speech, press and assembly as was the *Dennis* decision itself. We think that if those freedoms are to be preserved, it must be held that the evidence as to petitioners does not establish guilt.

Of course it will be argued by respondent that the jury must have found that petitioners conspired as charged, having the intent charged, and consequently that the restrictions on speech, press and assembly are permissible. This argument begs the question. Presumably the jury did so find. But the problem is whether, in the light of the First Amendment, a jury should be permitted to make the inferences necessary to the verdicts against petitioners. The solution of that problem, like the answer to any First Amendment question, turns upon a balancing of interests.

Realistically appraised, the convictions of petitioners constitute a prohibition against engaging in lawful activities as a member of the Communist Party. This is what was directly proven as to petitioners. This is what others must *not* do if they would avoid petitioners' fate. Thus the problem of interest balancing involves an analysis of what is to be gained and what lost by preventing such conduct.

On the one hand is society's interest in prohibiting conspiracies to violate the Smith Act. The weight of

that interest necessarily varies with the strength of the proof that a defendant did so conspire. For example, if the evidence as to some defendant in this case showed only that he spoke in favor of trade unions, there would be no basis for supposing that he conspired to violate the Smith Act and thus society's interest in preventing such a conspiracy would be of no consequence. The interest in protecting the right to speak as the defendant spoke, being offset by no competing interest, would prevail and a conviction of the defendant would violate the First Amendment. We have already considered the evidence concerning petitioners. We think it inadequate within the substantial evidence rule, the rule which protects an individual against erroneous conviction of crime. The point here, however, is that this inadequacy also is significant as a factor in the First Amendment equation. The evidence shows that petitioners engaged in lawful speech, writing and assembly; that is all. The inferences necessary to convert such activities into proof of participation in the alleged conspiracy are highly unlikely ones. Thus it also is unlikely that society's interest in preventing such conspiracies would be served by a prohibition of such activities. However, if there is any chance, no matter how slight, that conduct like petitioners' is proof of the forbidden conspiracy, then society has *some* interest in prohibiting that conduct. The problem is whether this interest in prohibiting it is outweighed by the interest in permitting such activities.

While it is highly unlikely that anything is to be gained by a rule under which petitioners' acts would suffice to establish guilt, it is quite clear that much is to be lost. The basic facts underlying petitioners' convictions are membership in the Communist Party plus the expression of unpopular views on questions of foreign and domestic policy. Whether petitioners' ideas were right or wrong is irrelevant. It is relevant, however, that what they said directly conflicted with much that was and still is generally accepted throughout our country. It is precisely this type of expression which must be protected if the values of the First Amendment are to be realized. If a society, a nation, wishes to reap the harvest of knowledge and understanding which flows from the free expression of ideas, it must sow and carefully nurture freedom to challenge central hypotheses, fundamental beliefs, "sacred cows."

> "The history of civilization is in considerable measure the displacement of error which once held sway as official truth by beliefs which in turn have yielded to other truths. Therefore the liberty of man to search for truth ought not to be fettered, no matter what orthodoxies he may challenge." (Mr. Justice Frankfurter, concurring in *Dennis v. United States,* 341 U.S. 494, 550).

It is just such orthodoxies which are the basic determinants of our actions as a nation, and thus their validity is of the utmost importance. Only if they can be freely questioned is there any assurance that the premises upon which we act are true.

Petitioners questioned. They spoke and they published. And they stand convicted of conspiring to advocate violent revolution. The lesson for others is clear, and unfortunately it is a lesson which all too many have learned and learned well these past years: Think only "acceptable" thoughts; question not what the majority has proclaimed to be true; say nothing which might be construed as criticism of the established order; and above all, join nothing, for organizations have other members and association with others is dangerous. Such is the aura which develops when membership in an organization and lawful speech, writing and assembly are shackled by chains of inferences which convert such activities into a conspiracy to violate the Smith Act.

> "Liberty of thought soon shrivels without freedom of expression. Nor can truth be pursued in an atmosphere hostile to the endeavor or under dangers which are hazarded only by heroes." (*Ibid.*)

That our society has witnessed such a constriction of freedom of expression seems clear. The signs are all around us. Indeed, who but the hero will venture criticism when criticism leads to suspicion, suspicion to accusation and accusation to sanctions, legal or extra-legal. The conviction of petitioners is a part of this pattern. They were convicted on suspicion and accusation, not evidence. If there were those within the Communist Party who looked to violent revolution, there is no evidence to show that petitioners knew of them. If the alleged conspiracy in fact existed, and if,

as a matter of objective fact, petitioners' activities aided it, there is no evidence to show that they intended to render such aid. Their intent, so far as the evidence shows, was to espouse the ideas they openly stated and to further an organization which publicly proclaimed that it sought to promote socialism, but only through democratic processes. These are the facts, plain and simple. Convictions based upon them are convictions for being members of the Communist Party and uttering dissident views. Such is the substance of this case. That it has been cast in a conspiracy form changes it not one bit.

If the evidence creates any possibility of petitioners' guilt, that possibility is so slight and the freedoms of expression involved so vital that a conviction based upon such evidence must fall if the First Amendment is to stand.[53]

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[53]The argument made above may seem novel in so far as its form is concerned. However we think that it has been implicit in various decisions of this Court. The essence of the argument is that when a statute involves a restriction on freedom of expression, society, as well as the defendant, has an interest in rules of law which delineate the type of evidence from which it is permissible to infer a violation of the statute. It seems apparent that it is this social interest which has found expression in decisions of this Court which have stated that the evidence must be "clear and unequivocal". See, *e.g.*, *Baumgartner v. United States*, 322 U.S. 665, 670 (1944).

CONCLUSION.

For the reasons stated above we respectfully submit that the convictions of petitioners should be reversed and directed verdicts of acquittal ordered.

We think that a passage written a century and a half ago, being a comment on a seditious conspiracy case of that time, is most appropriate here:

> "This faulty mode of reasoning in a circle, will often occur in accusations of this nature, where it is not the offender but the offence, that is sought after—where the government exerts itself not to discover those whom it believes guilty, but to discover of what they are guilty. . . ." BENTHAM, CIRCUMSTANTIAL EVIDENCE 187-88 (1825).

Dated, August 15, 1956.

Respectfully submitted,

AUGUSTIN DONOVAN,

Attorney for Petitioners.

(Appendices A and B Follow.)

18 U.S.C. (1946 ed.), Section 10.

"(a) It shall be unlawful for any person—

"(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force and violence, or by the assassination of any officer of any such government:

"(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

"(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof."

18 U.S.C. (1946 ed.), Section 11.

"It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of sections 9-13 of this title."

18 U.S.C. (1948 ed.), Section 2385.

"Whoever knowingly or willfully advocates, abets, advises or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the gov-

ernment of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or * * *

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof * * *

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction."

Section 4(f) of the Internal Security Act of 1950, 64 Stat. 992, 50 U.S.C. Section 783(f), provides in part:

"Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. * * *"

18 U.S.C. (1948 ed.), Section 371.

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy,

each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701."

First Amendment.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

EXHIBIT 186
USE THE PRESS AS A KEY POLITICAL WEAPON

By Al Richmond
Executive Editor, Daily People's World

In speaking for adoption of the resolution on the press, I would be less than honest with this convention, and less than adequate in my responsibilities to the Party, if I did not say I am disturbed at the fact that the report on the press comes at this late hour in our proceedings.

Comrade Williamson has given the general characterization of our work in this field when he described it as the weakest sector of our work. I would like to present some facts and figures which will help to underscore the gravity of the situation, and give the convention a more detailed picture of our weaknesses in this respect.

Circulation Increase Less Than Party Growth

In the three-year period since our last convention, the Party membership in this state has risen some 67 percent. Yet in the same period the circulation of The Daily People's World has risen only, slightly, some 15 percent in its average daily circulation, a figure based on all forms of circulation, subscriptions, newsstand sales, bundle orders and our weekend list. But even that does not give the full picture. If we exclude Los Angeles and Contra Costa counties, in which the circulation has risen, then in the rest of the state there has been an actual decline in circulation during the three-year period!

How is such a fact to be explained? Some comrades will say "underestimation." I don't think that's a full explanation. We use the word "underestimation" too often. It has become a sort of ritual phrase for the confession of sin that brings with it automatic absolution.

When we examine the situation in the counties, we uncover some more interesting facts. Take Los Angeles, for instance. Los Angeles has done relatively better than other counties. Yet even here, while our daily subscription list has gone up some 25 percent during the past three years—and subscriptions still form the basic circulation of the paper—the Party membership has increased 63 percent during the same period. And more. In Los Angeles we have 5100 Party members, but our daily subscription list numbers only 4580. Thus, Los Angeles is the only one of the major counties where the subscription list is smaller than the Party membership.

Let us take an even worse example, Alameda County. I would like the comrades from Alameda to explain the following facts. In your county, comrades from Alameda, the Party membership has registered considerable growth in the past three years. It rose 74 percent, from 577 members to 900. But in the same period, the circulation of the paper has actually declined. The daily subscription list went from 1100 to 971. How do you explain that, comrades from Alameda? When I am confronted with such facts, I am inclined to say, maybe even underestimation is better

than no estimation at all. There doesn't seem to be any sort of estimation reflected in such figures.

Our weaknesses in press work can not be regarded in a vacuum. They cannot be regarded as things in themselves. I say that when we speak of weakness in press work, we are also speaking of weaknesses in our mass work. For, to be correctly estimated, the circulation picture has to be related to the central political tasks placed before the Party by this convention.

Press In Relation To Political Tasks

We have been talking here about the fulfillment of the vanguard role of the Party, and the development of the independent role of the working class through a consistent application of the tactic of the united front from below. These are central tasks of our Party. And to fulfill these tasks, it is necessary to build our paper.

If our policy were based on the concept of the united front from on top, on maneuvers with certain leaders, then there would be no need for a mass circulation of our paper. You don't need a mass circulation to effect such a policy. But when you speak of a united front from below, then you are talking about reaching the masses, and then a mass circulation becomes imperative.

If we wanted to abandon the concept of the vanguard role of the Party, then we wouldn't care about reaching masses of people with our message. But if we are to fulfill a vanguard role, then it is imperative

that we reach masses of people directly, that we build a mass circulation for our paper.

That is how the question of circulation must be understood.

There is no time here for a balanced report on, or review of, the past three years. But there is one other concept that needs comment, one that is related to the central question dealt with before.

Some comrades have this idea: "We have to do this, and we have to do that; there is this campaign, and there is that campaign—and on top of it all we have to bear this cross, The People's World."

PW An Instrument To Help Our Work

Comrades, we do not have to bear any crosses. At least not willingly. Capitalism is a cross, and we are fighting to get rid of it. And if The People's World is really a cross, then we should fight to get rid of it. But this approach misses the whole point, and makes it impossible to proceed to a solution of our problems in this respect. The People's World is not a cross to be borne on top of all our other jobs. It is an instrument to help do the jobs we have to do. If this point is understood, then all other questions in relation to our press work can easily be answered.

If we engaged in a campaign—let us say—let us say, a campaign to defeat the Mundt Bill—then the circulation of our paper is not something we must do in addition to the campaign; it is something we must do to ensure the success of the campaign. The paper must be seen as the instrument to help explain the issue to

the masses of people, to help organize them in the struggle around that issue.

That is the thing that has to be understood. We must build the paper not just to build it as an end in itself; we must build the paper if we are to fulfill our political responsibilities. And once that is understood, then we will not speak of our press work as the weakest sector, and as a result all our work, all the way down the line, will be better.

In moving the adoption of the resolution, therefore, I hope that you vote not only for its passage, but for its implementation; that you vote to go back to your section, county and club with the resolve to carry through the letter and spirit of this resolution in actual life.

1. That during the election campaign, special concentration both in the editorial and circulation work be directed on the weekend edition, with the aim of making it a mass organ of the campaign. That in this connection every club, section and county work out specific goals for the distribution of bundles and the securing of subscriptions during the course of the campaign, and organize to guarantee the fulfillment of these goals.

2. That a campaign of clarification and education be instituted throughout the Party on why and how the Daily People's World should be used in the campaign.

3. That the State Committee, in view of the gravity of the situation, appoint a sub-committee to survey our

press work, and to report back its finding and recommendations to the State Committee.

4. That the State Board institute systematic reviews of the paper's content and line; and that various Party commissions institute similar reviews of the paper as it pertains to their special fields of work.

5. That there be a still further integration of the staff of the paper in the Party committees and commissions to guarantee a greater sensitivity to the tactical orientation and organizational problems of the Party's mass work.

6. That each county, taking inspiration from the example set by Los Angeles, take steps to guarantee the successful fulfillment of the Fighting Fund campaign, within the shortest possible time.

EXHIBIT FM
SAVE THE PEACE

U.S.-Soviet Cooperation By Al Richmond

The flag-draped caskets still are landing on American shores. The corpses that were sowed on the beaches of France and Italy, on the bridgeheads of rivers that traverse Western Europe, on the coral formations of the Pacific islands, are coming home.

And even before these dead reach their last burial place, maniacs propose that new graves and new caskets be readied for the dead of still another war.

Hate Headlines

Headlines of hate are reserved for the front pages. But in the less conspicuous spots of inside pages, the statistics of death still make news. Only last week, the Encyclopedia Britannica released the estimates of Secretary of State George C. Marshall of the casualties in World War II. The Russians, he said, suffered most heavily, lost 7,500,000 men and women in battle, one human being out of every 22 in the vast expanse of the Soviet Union.

Those were the battle casualties. There is no estimate of the civilians who died of hunger and cold and disease in the dreadful sieges and the painful evacuations, or in the territories occupied by the Germans.

For the Russians, this was the third bloodletting in the span of two generations. In World War I, they lost 1,700,000 men, more than any other belligerent. In the war of intervention that was waged against them after their successful revolution exactly 30 years ago, an estimated 7,000,000 men, women, and children perished in battle, or of disease and starvation.

They know war

With such a people, that more than any other bears the deep wounds of war, it should be easy to make peace. To them war is not an abstraction seen through the eyes of a war correspondent or the lens of a movie camera. It is a grim reality marked by close to 20 million graves, by the memory borne by virtually every Soviet family of someone who perished.

Is it any wonder that these people are sensitive to warmongering? Is it strange that they can regard no crime more heinous than deliberate incitation to war?

Yet, in our own land, George H. Earle, former pinball ambassador to Bulgaria and former governor of Pennsylvania, can publicly urge that an atomic bomb be dropped on Moscow. And he is not rebuked by the press, nor reprimanded by those in the seats of power.

Instead, rebuke and reprimand is reserved only for those who advocate peace, who propose that friendship with Soviet Russia is preferable to an atomic war, the consequences of which no one can foresee with certainty.

Thinking Back

Of the 30 years the Soviet Republic has been in existence, there were only three brief years when, under the stress of war, the hand of friendship was extended. In that brief interlude, the possibility of cooperation was demonstrated, but its promise was not pursued.

Think back upon the years. From 1917 to 1933, not even the civility of diplomatic recognition was extended. In the years immediately following the revolution American troops invaded Soviet soil, American dollars financed the 14 armies that threw themselves at the young Soviet republics.

After that, U.S. diplomacy was the tacit accomplice of the economic boycott of Soviet Russia, and later of that ill-conceived plan that rebuilt Germany and created the monster of Hitlerism as a bulwark against Russia.

Only with the entrance of President Roosevelt into the White House on March 6, 1933, was there the beginning of an attempt to find the basis for friendly coexistence with the Soviet Union. This overture was met more than half-way.

And during the war, when American blood and Russian blood was mingling on the battlefields of Europe, the first timid overtures blossomed into something akin to friendship.

What has happened?

What has happened since then? What has happened since all Americans thrilled to the heroic saga of Stalingrad?

Some say the Russians have changed since then, have shown their "true colors." But the historic record belies that claim.

The change has come in our own country. A great President, who sought to build an edifice of peace on the only sure foundation, Soviet-American friendship, has died. In his stead has come a small politician from Missouri who has hearkened to the same voices that dominated American foreign policy from 1920 to 1933.

The Roosevelt tradition and the Roosevelt dream of peace have been betrayed and buried in Washington. Instead, the Hoover tradition has returned, and Herbert Hoover himself helps shape the bi-partisan foreign policy.

This is not only a betrayal of a man, of a tradition; of a political promise inherent in the platform upon which he sought and won election in 1944.

It is a betrayal of the American people.

The Russia-haters are America-haters, for they are willing to gamble with the lives of millions of American boys to gratify their own hates and prejudices.

The popular catch phrases like "cold war," "containment," "get tough"—each of them has as its premise a continued and growing antagonism. Each of them, despite the reassurances of columnists and diplomats, can find its end logic only in war—in the transition from "cold war" to "hot war," from "containment" to "encirclement" and to the military concept of the pincer movement.

These concepts cannot form the basis for enduring peace. Only an effort at understanding, cooperation and friendship can provide such a basis.

Essentially, therefore, friendship or enmity with the Soviet Union can be translated into peace or war. That is the choice before the American people, and they can make the wisest choice through the most careful consideration of self-interest.

Sure, William Randolph Hearst hates Russia. But must the spite of this evil old man, and other evil old men, be redeemed with the lives of countless millions of American youths?

EXHIBIT 330

From: *PEOPLE'S WORLD*, Friday, July 15, 1949.

A STATEMENT BY THE EDITORS ON THE BATTLE AGAINST ALL FORMS OF CHAUVINISM

Within the span of little more than a month, the Daily People's World published three stories in its week-end magazine section that contained glaring expressions of white chauvinism and anti-Mexican chauvinism.

This is especially serious for a paper like The Daily People's World which has been, from its inception, in the thick of the battle for the rights of the Negro people and the Mexican-American people, and fights every day against the oppression to which they are subjected.

> "Pedro's Gift" (June 3) offered a stereotyped portrait of a Mexican worker as the irresponsible child of his emotions, a stereotype that has been bred by the attitude of jingo "superiority," fostered by U.S. imperialism, to justify or gloss over its oppression of the Latin-American people here in the United States. The story presented the Mexican worker as a terrorist bomb-thrower, and thereby not only displayed an anti-Mexican attitude, but projected the wrong and provocative suggestion that individual terrorism was a method of class struggle.
>
> "School Days" (June 24) was a story that condoned shamefaced surrender to white chauvinism, presented such surrender in sympathetic terms, and thus encouraged its readers to similar shameful behaviour.

> "Southern Exposure" (July 1) was permeated with the patronizing air of the "superior" U.S. tourist in Mexico, regarding the Mexican people with amused condescension.

Two of the stories ("Pedro's Gift" and "Southern Exposure") were embellished with drawings that were offensive, both reflecting or adding to the harmful content of the written material they illustrated.

The appearance of three such stories in such quick succession, particularly after readers had made proper objections to the first, reveals the need for the most critical self-examination of The Daily People's World staff in general, and the responsibility of the editorial board in particular.

The publication of one such story would be grave in itself, denoting a lack of necessary vigilance. But failure to perceive the insidious nature of the first story, and the further failure to take the necessary corrective measures after the matter had been called to the attention of the editors, and the still further failure to insure the paper against a repetition of similar mistakes, denotes passivity and a reluctance to wage the fight against U.S. chauvinism in general, and the false concept of "white supremacy" in particular.

Such passivity and reluctance, of necessity, reveal that those guilty of it are themselves infected with the virus of chauvinism.

The evidence of this infection was climaxed with the attempt to evade the issue with a routine editorial footnote in the letter column (July 5), casually approving

a letter critical of the story, "School Days." To make matters worse, the critical letter was run together with a letter lauding the story, giving the impression that white chauvinism was a proper subject for pro and con discussion in the columns of the paper.

These overt instances of chauvinism follow other errors, similar in nature, if not as glaring. These follow, too, a period in which the paper gave inadequate political attention to specific aspects of the struggle for Negro rights, most notably evidenced in the slowness with which the campaign for the Trenton Six was undertaken.

All these facts taken together reveal a lack of fundamental understanding of the national question generally and the Negro question specifically, particularly as these questions present themselves in the day-to-day political struggle.

The editors of The Daily People's World are fully aware of the grave nature of these revelations, and take full responsibility for the serious errors committed.

Chauvinism and the especially harmful expression of it, "white superiority," are always deadly to the progressive and working class movement. Such ideas and attitudes create the ideological buttress for the national enslavement of the Negro people, and constitute an indispensable base for the rule of U.S. reaction, and its oppression of white workers, as well as the Negro people. Similarly, such ideas and attitudes help support the oppression of the Mexican-American

people in our own land, and to further the designs of U.S. big business to oppress the peoples of Latin America.

At this particular juncture in history, such ideas and attitudes do harm of even deeper significance. In its designs for world conquest, U. S. imperialism seeks to infest the American people with jingoism, with the Hitler myths of "race superiority," so that the people will develop the frame of mind to butcher other people at Wall Street's command. In furtherance of this same aim, U. S. imperialism seeks to drive deeper the wedges of division among American workers, and the people generally, so as to make them impotent in the face of big business designs for fascism at home, and aggressive war abroad.

The first victims of this shameful ideological warfare have been the Negro people. And this war of ideas has quickly assumed the very material form of lynchings, a Ku Klux Klan revival, mounting judicial persecution and police brutality, as well as increased discrimination in industry.

At such a time, for the editors of a progressive paper to permit, and by inaction, condone, the expression of these poisonous ideas in the columns of the paper they edit is a particularly grave offense against the working class and the progressive movement.

At a time when the paper should take the lead in waging the most effective and uncompromising struggle against every expression of chauvinism and "white

supremacy," thus helping the entire progressive movement to wage a similar struggle, it is particularly grave for the paper to become a vehicle for the very ideas it should combat.

The paper, because its influence is enhanced by its prestige and the tradition it represents, has done incalculable harm in the instances recited above.

We bring these facts and judgments before the readers of The Daily People's World because we are mindful of our ultimate responsibility to them. We are mindful of the fact that their loyalty and devotion has made the existence of the paper possible, and that this loyal devotion is evoked by the conviction that the paper is the uncompromising champion of the interests of the working class, and the liberation of all oppressed peoples.

The Daily People's World has a long and honorable history of battle in behalf of the Negro people, in behalf of the Mexican-American people, and for the unity of the workers of all nations in the common struggle against imperialist oppression and exploitation.

This fine tradition was placed in jeopardy by the series of recent incidents and the chauvinist passivity of the editors that made these incidents possible. More, this same chauvinist passivity not only jeopardized the influence of the paper, but did damage to the progressive movement it serves.

Drawing the necessary and serious conclusions from all the foregoing, the editors of The Daily People's World pledge--

1. To carry through a most searching, and most critical examination of their own work, and the operation of the entire staff with the aim of rooting out every expression and vestige of chauvinism, taking what political and organizational measures are needed to realize this aim. We view this process not as a temporary effort, but the beginning of a continuing struggle to insure that the paper fulfills its mission in this respect.

2. To heighten, in the columns of the paper, the battle for Negro rights on every front, as well as the battle against every form of special oppression to which the Mexican-American people are subjected.

3. To conduct a systematic campaign in the columns of the paper against the ideas of chauvinism and "white supremacy," laying bare their roots in the system of national oppression, and exposing their harmful consequences, not only to the peoples directly oppressed, but the working class in its entirety.

4. To wage a tireless campaign for the unity of all workers, Negro and white, and the members of other minority groups, as the essential bulwark of the great and growing camp of peace and democracy.

With the assistance of our readers, and the organizations that have given such steadfast and splendid support to the paper, we are confident these measures will be carried through, and The Daily People's World will thereby gain in strength and influence, and will fulfill its mission as the powerful,

voice of an ever growing progressive and labor movement on the Pacific Coast.

SIGNED BY THE EDITORS: Al Richmond, Adam Lapin and George Lohr.

EXHIBIT 191

STRIKE STRUGGLES—SOME KEY CONCLUSIONS

Even prior to U. S. intervention in Korea, strikes in California, as in the rest of the country, increasingly assumed the character of rank and file struggles. Since the beginning of the Korean war, this tendency has become more marked and there is every reason to believe that in the future it will be even more pronounced.

The reason is simple. The top officials of AFL and CIO, guided by a class collaboration outlook, have never had much stomach for initiating and leading strike movements. But when they entered into their compact with big business to support the bi-partisan policy of imperialist aggression, they in practice, if not formally, gave a "no-strike" pledge. At the recent state AFL convention, this pledge was virtually formalized when the reigning bureaucracy defeated any move to place the convention on record against a "no-strike" pledge. In the CIO Auto Workers the "no-strike" pledge takes the concrete form of a five-year no-strike contract, and there are reports that a similar contract is being planned for the steel union by Philip Murray and the Steel Trust.

Two immediate conclusions can be drawn from this state of affairs:

* To a greater degree than ever before, if we wish to influence the course of strike movements, we must orient our policy on reaching the rank and file, and effecting the united front from below.

* To a greater degree than ever before, every strike becomes a battle not only against the employer, but against the sellout bureaucracy in the labor movement.

Certainly these conclusions are confirmed by the experience in the Los Angeles painters strike this spring, the informal strike of Los Angeles carpenters in midsummer, the wage movement among San Francisco Bay Area Carpenters culminating in a one-day strike at about the same time, in a series of work stoppages at the Columbia Steel mill at Pittsburg, and more recently, in the highly significant strikes at the Lincoln-Mercury and Columbia Steel plants in Los Angeles.

In the circumstances of today, the most fatal error is an underestimation of the readiness and capacity of the rank and file to fight. This error was manifested most graphically among the left progressives and Communists in the San Francisco Bay Area carpenters' wage movement. An underestimation of the rank and file means, in practice, the acceptance of the "no-strike" pledge, and the abandonment of any effective struggle to defend and advance the workers' economic interests.

Once the skepticism about the rank and file was broken down among the Carpenter progressives in the

San Francisco area, a movement was developed, but because of the initial passivity the rank and file movement never attained its potential strength, and demands that could have been won went by the board in the final settlement.

In all the instances cited above, the official machinery of the unions is in the hands of the right wing. However, a policy oriented on the rank and file is essential to any successful economic struggle in the left-led unions, as well. This is confirmed by the experience among the electrical workers in Alameda county, and the wage movement among the warehousemen there.

Threatened by raids, and operating in the face of the anti-strike pressure generated by the employers and the official top labor leadership, the left-led unions can win substantial gains only through maximum mobilization of the rank and file.

Because of the immense and critical problems our party and our working class face, it is more important than ever to point up the political conclusions that emerge from every strike struggle. The manner in which these conclusions are drawn, their specific character will, naturally, depend on the concrete circumstances in each struggle.

However, a general orientation can be indicated, and certain general principles can be laid down. Among these are:

* Each strike is objectively a revolt against the "no-strike" policy favored by the top officialdom. It should be used as an object lesson to expose that

policy, and its class collaboration base. The point should be driven home that the labor officialdom has entered into the present phase of its abject class collaboration for the political purpose of creating an aura of class harmony, of so-called national unity which big business seeks as the political basis for its aggression abroad.

* In each strike, the elementary, yet profoundly important class point should be made as to who is the enemy, that the enemy of the worker is not some Korean peasant or Chinese worker, but the capitalist, particularly the big monopoly section of capital that sets the tone and lays down policy for its entire class.

There are two cardinal lines of a class approach, which, if developed skillfully and concretely, will serve to relate the economic struggles to the overriding political issues of the day, particularly the central issue of peace, and which will, incidentally, make for a more effective conduct of the economic struggles as such, bringing maximum gains to the workers.

—Al Richmond.

the conspiracy. The record is virtually silent on what occurred at these meetings. Can we simply assume that something occurred which demonstrates petitioners' adherence to force and violence? Is this the type of reasoning upon which criminal charges involving restrictions upon the freedoms guaranteed by the First Amendment are to be sustained?

At page 111 respondent claims that the Communist Party exercised discipline over persons working on the *Daily People's World*. The references to the record show that one person who was on the paper *resigned;* another person was refused registration in the Communist Party for a certain period of time, subject to reconsideration in about a year; and a third person was removed as editor of the paper, this being in the year 1936, a date prior to the time when Richmond and Connelly were even associated with the paper. However, whatever the discipline, and the record shows very little, it was not manifested in any way while Richmond and Connelly were on the paper which would tend to show that they were connected with the alleged conspiracy.

In essence, respondent's "argument" consists entirely of conclusionary statements unsupported by any reasoning. The whole argument might have been more briefly stated as follows: Petitioners Richmond and Connelly just *must* have been part of the conspiracy. After all, so the argument goes, they were Communists, and we all know that the goal of the Communist Party is violent overthrow of the Government. Of course, the record shows that there were